STATE OF MICHIGAN

IN THE SUPREME COURT

Appeal from the Court of Appeals
Cynthia Diane Stephens, P.J., Joel P. Hoekstra and Deborah A. Servitto, JJ.

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee,

-vs-

THEODORE PAUL WAFER

Defendant-Appellant.
_____/

Supreme Court No. 153828

Court of Appeals No. 324018

Circuit Court No. 14-000152-01

WAYNE COUNTY PROSECUTOR
Attorney for Plaintiff-Appellee
_____

STATE APPELLATE DEFENDER OFFICE
Attorney for Defendant-Appellant
_____

APPENDIX TO

DEFENDANT-APPELLANT'S

SUPPLEMENTAL BRIEF

STATE APPELLATE DEFENDER OFFICE

BY: Jacqueline J. McCann (P58774)
Michael L. Mittlestat (P68478)
Maya Menlo (P82778)
3031 W Grand Blvd, Suite 450
Detroit, MI 48202
(313) 256-9833

Index of Appendices

STATE OF MICHIGAN

20TH DISTRICT COURT
3rd Judicial Circuit

INFORMATION
FELONY

2013722161
CASE NO: 2013722161

The People of the State of Michigan

vs

THEODORE PAUL WAFER 82-13722161-01

Offense Information
Police Agency / Report No.
82DH 130020616
Date of Offense
11/02/2013
Place of Offense
16812 W OUTER DR, DEARBORN HEIGHTS
Complainant or Victim
RENISHA MARIE MCBRIDE
Complaining Witness
D/SGT STEPHEN GURKA

STATE OF MICHIGAN, COUNTY OF WAYNE
IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN: The prosecuting attorney for this county appears before the court and informs the court that on the date and at the location described above, the Defendant(s):

COUNT 1: HOMICIDE - MURDER - SECOND DEGREE
did with intent to kill, to do great bodily harm, or to act in wanton and willful disregard of the likelihood that the natural tendency of said act would cause death or great bodily harm, kill and murder one Renisha McBride, said act committed without premeditation or deliberation; contrary to MCL 750.317. [750 317]
FELONY: Life or any term of years; a defendant may be convicted for each death arising out of the operation of a vehicle, vessel, ORV, snowmobile, aircraft or locomotive arising out of the same transaction, and the court may order consecutive sentencing. MCL 769.36; DNA to be taken upon arrest.

COUNT 2: HOMICIDE - MANSLAUGHTER - DEATH BY WEAPON AIMED WITH INTENT BUT WITHOUT MALICE
did wound, maim or injure Renisha McBride by discharging a firearm that was pointed or aimed intentionally but without malice at another person, and the wounds, maiming, or injuries resulted in death; contrary to MCL 750.329. [750.329]
FELONY: 15 Years and/or $7,500.00

COUNT 3: WEAPONS - FELONY FIREARM
did carry or have in his/her possession a firearm, to-wit: a shotgun, at the time he/she committed or attempted to commit a felony, to-wit: murder or manslaughter; contrary to MCL 750.227b. [750.227B-A]
FELONY: 2 Years consecutively with and preceding any term of imprisonment imposed for the felony or attempted felony conviction; Mandatory forfeiture of weapon or device [See MCL 750.239]

Upon conviction of a felony or an attempted felony court shall order law enforcement to collect DNA identification profiling samples.

and against the peace and dignity of the State of Michigan.

Kym Worthy
P38875
Prosecuting Attorney

11/14/2013
Date

By: [signature]
Bar Number
P63017

minutes. So be back at 1:30.

DEPUTY: All rise for the jury.

(At 12:30 p.m., off the record)

(At 1:17 p.m., on the record)

COURT CLERK: Okay. We're here to discuss final proposed jury instructions. I don't see the red books in front of you. Have you guys been provided with the Court's proposed instructions?

MS. CARPENTER: No.

THE COURT: Okay. That's step 1. Give me a second.

(At 1:17 p.m., brief pause off the record)

(At 1:18 p.m., on the record)

THE COURT: Do you want to approach.

(At 1:18 p.m., conference at bench/off the record)

THE COURT: Give me one second before we get into them. And you can certainly take your time. But my thoughts are, I read today everything through count 3, felony firearm. And then tomorrow we start with closings. And then I read the final five instructions.

Does anyone see anything that's not on this list that you wanted in there or anything on the list that you did not want in there?

MS. SIRINGAS: Well, number 303 says defendant did not testify, your Honor.

THE COURT: Oh, of course. That's going to be

removed. Thank you.

MS. CARPENTER: Your Honor, I haven't had a chance to look at 'em all yet.

THE COURT: Okay. Take your time.

MS. CARPENTER: Okay.

MR. MUSCAT: I would point out that count 2, suppose to be, it's not called involuntary manslaughter. It's statutory manslaughter. I just read it as manslaughter.

THE COURT: That's the way we are going to read it. It was just put on the composite list as involuntary manslaughter. But within the instruction itself it just says manslaughter.

MS. CARPENTER: Yes.

MR. MUSCAT: And within that instruction, it shouldn't, it should read that--when they talk about aiming. It should be at a person. You don't have to prove that the defendant knew who the victim was. And that's based, if you look at the statute. I think it's misleading to-

THE COURT: Read the instruction that I have and then tell me how you want it changed. Because I don't think, I don't see anything in here that says he had to know who it was.

MR. MUSCAT: I don't think--maybe. Let's see. The third element is at the time it went off the defendant was pointing it at another person.

THE COURT: Okay. Give me a second. I was looking at a different instruction. What are you saying Mr. Muscat? Do you have the statute in front of you? Can you grab that for me.

MR. MUSCAT: I

THE COURT: I can go in the back and get it.

MR. MUSCAT: Yeah.

THE COURT: But how are you saying it needs to be changed to conformed to the statute?

MR. MUSCAT: How you have it as written Judge. I don't have a copy of that one.

THE COURT: Okay.

MS. SIRINGAS: I have it right here Mr. Muscat.

MR. MUSCAT: Okay.

MS. SIRINGAS: The standard.

MR. MUSCAT: See, it says third at the time the firearm went off defendant was pointing it at named deceased.

THE COURT: This just says at another person.

MR. MUSCAT: Right. And that's how it should read.

THE COURT: Okay. That's how I was going to read it. Okay. All right. Then we're not putting anything else on the record until they get back.

MS. CARPENTER: Well, Judge I wanted to say--

THE COURT: We're on the record.

MS. CARPENTER: Sorry, your Honor. I just had to

double check something with the client.

THE COURT: That's fine. As long as you're fine with that.

MR. MUSCAT: Judge 1621, state of mind. Referring to state of mind. Dangerous weapon.

THE COURT: Okay. Give me a moment. That's not on there?

MS. SIRINGAS: Nope.

(At 1:26 to 1:27 p.m., pause on the record)

THE COURT: Okay. Ms. Carpenter.

MS. CARPENTER: Yes, your Honor.

THE COURT: Any additional instructions or instructions you have issues with?

MS. CARPENTER: Yes.

THE COURT: Go right ahead.

MS. CARPENTER: There's two additional instructions. One's a special instruction. And one is 7.16A. The rebuttal for presumption.

THE COURT: Do you have a prepared special instruction?

MS. CARPENTER: I don't. I didn't prepare it. But I can tell you what I'd like it read. And I can go type it up upstairs real fast.

Your Honor, the special instruction I am requesting for the defense is based on the Michigan Supreme Court case.

Which is unpublished. From 2011. People versus Richardson. I can give you a copy of it I have here.

THE COURT: Sure.

MS. CARPENTER: Let's see. It's decided July 27, 2010. And the cite is 2010 Mich App. And than I just have left--oh, I'll give the number of the case, 291 617.

And in this case, in People versus Richardson it was exactly this type of case. Self-defense. Shooting. And it was on the porch. And they said the jury was in fact in formed that the person attached in his or her home had no duty to retreat.

And that one is clear. And it's in there. It's also instructed that a person's porch is considered part of his or her home. That's what I want the special jury instruction just to read.

A person's porch is considered part of his or her home. And that's it. Oh, and I'll hand you this case, your Honor.

THE COURT: Thank you. Okay. Let's address, any issue with 7.16A coming in.

MS. SIRINGAS: Yes, your Honor .

THE COURT: And what is that?

MS. SIRINGAS: There is no evidence to support it. If you look at the instruction you have to have both A and B. There's no evidence to support that Renisha McBride was

breaking and entering into that house.

Both of those have to exist for the instruction to be relevant. And that was the difference that, you know, the statute says both of them have to exist. Not that the defendant reasonably believed that she was breaking and entering.

But in fact that she was, in fact, breaking and entering into that house. There's no evidence that she ever, if you look at the breaking and entering instruction; it talks about that you have to not only have breaking potentially. That the screen door was off.

There was never any attempt or any evidence exist that she attempted to enter through that area. That she attempted to put any part of her body through any part of his house. So there's no evidence of breaking and entering as required by the statute. And both of those things, both of these conditions have to exist in order for this instruction to be relevant.

THE COURT: Okay. I'm reading the instruction. And it says choose either A or B or both.

MS. SIRINGAS: Yeah. That's why--it was amended cause the statute required; it was just amended because--well, in speaking with Mr. Baughman, we caught that the statute is different than the actual instruction. And I have for the Court an amended instruction that was just adopted yesterday

based on our showing to the Court, I mean, showing to the jury committee that it was wrong.

THE COURT: Okay.

MS. SIRINGAS: It's inconsistent with--

MS. CARPENTER: And your Honor, I would like to put on the record.

THE COURT: Go ahead.

MS. CARPENTER: Defense has no knowledge of this. The Prosecutor went out on there own to contact the committee who does jury instructions an they changed it based on this case. And based on the Prosecutor calling them.

That should have been done way in advance. Before I gave to the Prosecutor's my arguments of the jury instructions which was clear before I used it in opening. The Prosecutor saw 'em and clear it. You saw 'em and cleared it.

The only problem was you all thought I was arguing to much about 'em. But nobody said, Ms. Carpenter you shouldn't bring 7.16A in front of the jury in opening because we're gonna call a committee and make 'em change it. And then make it so you can't use it.

Yeah, and did the committee comply with the Court order. What shows that the jury instruction was amended already. And when, you know there--okay.

THE COURT: Yes. It says this instruction was amended affective immediately under MCR 1.201D without prior

publication under MCR 2.512D. Because the instruction was clearly erroneous. And the committee determined that immediate action was necessary.

MS. CARPENTER: Based on the Prosecutors in this case calling them. That's not fair. Due process rights are violated. They can't say, okay it can be used in opening.

We're gonna go change the rules behind your back. Get it changed. Now you can't use anything. I think we're still entitled even if you think it's and. There's still enough. And I'll wait for that argument before.

THE COURT: Okay.

MS. CARPENTER: Or later.

THE COURT: I don't know if that's a valid argument. To say that you made it, you argued it in opening to therefore they have to get the instruction. If there wasn't any self-defense presented, I wouldn't be giving that instruction either. Despite the fact that you argued it in opening.

MS. CARPENTER: Well.

THE COURT: But I am going to give it since the evidence was presented. But right now my interest is just in doing what's right. So if this is warranted let's-

MS. CARPENTER: Your Honor, if it warranted-

THE COURT: Go ahead.

MS. CARPENTER: --I put my objection on the record. I'll move on. I would ask for 7.16A. And if you need to

change it, 1, chose both A and B, 1A and B that's okay. There's evidence to support both in this case. Sufficient evidence.

MS. SIRINGAS: The jury instruction is very clear that it's both. We had a brief that we had prepared for the Court that says, if it---there's, it's--in the past jury instructions have been wrong. The governing, it's the statute that governs what gets before the jury.

THE COURT: Yes. I know.

MS. SIRINGAS: The statute clearly says both. So we have the brief to go with that. Just because the jury instruction was wrong.

But we were able to, you know, change that instruction because it was so obviously wrong. To correct it and reflect what the law requires. And there is no evidence of breaking and entering.

The testimony here has been clear. No one ever entered his house. No one ever put any hands--I mean, everybody agrees that there was no evidence of entering.

And if you look at the instruction for breaking and entering, that's what it requires. It would require both breaking and entering. And so the People object.

There's no evidence on the record. It's not supported by any evidence. And the People object to that instruction being given.

MS. CARPENTER: Your Honor.

THE COURT: Go ahead.

MS. CARPENTER: I would refer you to MCL 780.951, which is--

THE COURT: Is that 751.

MS. CARPENTER: Sorry. It's 780.951.

THE COURT: Okay. Go ahead.

MS. CARPENTER: About, and this is a statute about self-defense. Subsection A, 1A. The individual against whom deadly force or force other than deadly forced is used is in the process of breaking and entering a dwelling or a home invasion.

THE COURT: Ms. Carpenter I have to stop you right there. Right now our courtroom door is locked. I don't want anyone saying that I'm not giving the public access to the courtroom. So just want to give them permission to unlock the door. And then you can continue.

MS. CARPENTER: Oh, that's fine.

THE COURT: The judges get in trouble for that. So give me one second.

MS. CARPENTER: You want to wait for them to come in?

THE COURT: No. As long as it's unlocked we can continued.

MS. CARPENTER: Okay.

THE COURT: Go right ahead.

MS. CARPENTER: So in the process is the requirement under the law. So I would argue that the jury instruction, they would have changed it also. Instead of saying was engaged in the conduct of, in the process of breaking and entering. That should be in this jury instruction.

If they had changed it to take away or, they should have changed it to match with the statute. What they did before. Which said in the process of breaking and entering. And do you want me to go over, I don't know where you're ruling on this.

THE COURT: Give me one second. Let me go grab that statute.

MS. CARPENTER: Okay.

(At 1:35 p.m., off the record)

(At 1:43 p.m., on the record)

THE COURT: My concern, having read the statue as well as the new 7.16A, is that it does require the deceased was breaking and entering. Mr. Wafer was very clear that no one ever entered his home.

I read the statute that says in the process of. Which to me means, the process of. Doing something that is actively breaking and entering.

When Mr. Wafer testified and said that he shot because she came from the left side and right in front of him. Which was not in the process of breaking and entering. So

either under the statute or 7.16A, I don't think it's an appropriate instruction to give to the jury.

Since there is no evidence that she was either breaking and entering. Based on his own testimony. Or in fact in the process of breaking and entering when she was shot.

MS. CARPENTER: Your Honor,

THE COURT: Go ahead.

MS. CARPENTER: I first want to direct your attention.

THE COURT: Yes.

MS. CARPENTER: And I know it's, you're kind of a gatekeeper on which jury instruction comes. But really, if we raised any evidence, any, that a reasonable trier of fact could find it; you should give the jury instruction. The jury instructions are for the jurors to comprehend. You look at the one I want.

The first words of the jury instruction are, if you find. That's for the jurors not your honor. If we have given you some self-defense and some evidence she was in the process of breaking and entering.

There's nothing that says in the process of breaking and entering. And her whole body was inside. In the process mean she was trying to get in.

Mr. Wafer, when he testified, he testified

consistent with that. She was trying to come in his house. She was coming at him. And it was really really close. The screen was broken. She was attempting to gain entry. And it's up for the jurors to decide.

And these include attempts. The jury instructions include attempted conduct for self-defense. So even if she attempted a breaking and entering, which is clear, then they get the jury instruction.

Also, your Honor, look at-not just breaking entering. 'Cause that's not the only offense in there. Where you get that rebuttal presumption. Let's look at home invasion.

Let's look at home invasion third degree. It just says that, they're coming in the house. Somebody's inside. Which we have. And a misdemeanor was committed.

Well we have her now with minor in possession of alcohol. That's clear. That's a misdemeanor. We have her fleeing the scene of a accident.

And then also we have marijuana in her system. We have three misdemeanors she has committed. So it doesn't, or a felony. A felony and then two misdemeanors. That can be for the home invasion.

I don't care what you say, if it's breaking and entering or if she was committing a home invasion. In the process of doing either one of those things. And it's for the

jurors to decide.

THE COURT: Okay. Ms. Siringas do you have any response to that.

MS. CARPENTER: Oh, one more. I'm sorry.

THE COURT: Go ahead.

MS. CARPENTER: That statute. If you go back to the statute that you read about the self-defense act and not just the jury instruction. It doesn't define what is breaking and entering for the purposes of the statute.

What is home invasion. All of that. That's for a--why don't you think we put the regular statute under the self-defense acts so the jurors can see what the elements are of breaking and entering. And then go, no that didn't happen. Because they are leaving it for the jurors to decide on their own.

THE COURT: Okay. Go ahead.

MS. SIRINGAS: Your Honor, the law requires that this Court determine whether or not jury instructions are relevant based on the facts that were established here in this case. At the time that Ms. Renisha McBride was shot, his testimony was she was about 2 feet away from him. She was not in the process of breaking in.

There's no evidence that she ever tried to break in. That she ever--we have the testimony from all the police officers. There was no evidence that any of the locks were

damaged. There was no evidence that any of the doors were damaged. There is no evidence that she was ever trying to break and enter.

And I agree that you can look at those instructions. And if you look at any of those breaking an entering instructions including the home invasions--the home invasion talks about; that when she was in the house she was committing a misdemeanor. Not when she was at her own house she was drinking and doing, you know, and smoking marijuana.

There is no evidence on this record to support that instruction. You can't just let the jury make determinations on their own. You are the gatekeeper. You determine what evidence is supported, what instruction is supported by the evidence that's been presented here. And there's absolutely no evidence that requires that that instruction be given or even close. And the People object.

MS. CARPENTER: And your Honor,

THE COURT: Go ahead.

MS. CARPENTER: I would like to say that, again the Prosecutor's offering arguments that there is no evidence of a breaking and entering. That is not true. We had somebody from Michigan State Police said there is a woven pattern that's consistent with a screen door on Mr. Wafer's main door.

We have evidence that we heard in this case that it was Renisha McBride who broke his screen. We have smudge

marks on the back. We have a footprint on the back AC unit. And if the police had dusted for fingerprints and had done their job correctly, we would have so much more.

So it's not fair for them to say there's no evidence of breaking. When we have Detective Sergeant Gurka said, I wasn't even looking for that when I was there. They, like we--had you know, it's we do have enough. But we would have even more if they had done their jobs.

So it just aggravate me when they use that against us. But with what they did collect we have evidence of home invasion in the process of or in the process of breaking and entering. Either one.

If you decide, look at that first paragraph for the jury. That first line. It's for them to decide. There is enough to give it to them. And let the Prosecutor argue in closing there's no evidence of a break-in or no evidence of a home invasion. And she can make those arguments.

THE COURT: But I think, based on the testimony that's before the Court, there was no evidence of the breaking and entering or home invasion. That was the whole point. Once you get that in, in some evidence. Then you can't say he wasn't looking for it but you have plenty of evidence. I mean that's contradictory.

MS. CARPENTER: But, your Honor, how do you explain why we have the woven pattern on the main door if she wasn't

trying to break and enter. Why do we have a screen door insert that's broken if she wasn't trying to break and enter.

THE COURT: The screen door insert could have been there long before she got there and dislodged. There's testimony from Mr. Wafer that he goes there weekly or sees his front door weekly. There was testimony that he parks on the side of his house. He doesn't use the street that goes out in the front of the house. That he never uses the front door. There's a reasonable assumption that that screen door was dislodged either before she got there or it could've been done by the shotgun.

MS. CARPENTER: Your Honor, all your arguments, you're you're--

THE COURT: I'm just-

MS. CARPENTER: You're setting the other side. And they're for the jurors. Not for use to determine.

THE COURT: But you were just asking how it could've gotten there.

MS. CARPENTER: Right.

THE COURT: And I'm just giving you plausible reasons.

MS. CARPENTER: But they're plausible. And my reasons are plausible too. And if you have two sets of plausible explanations, let the trier of fact determine.

THE COURT: I'm going with what the evidence showed.

I was giving you something plausible. I'm going with what the evidence showed. And the testimony was that there was no entering.

MS. CARPENTER: She was coming at him. Coming at, and there is nothing that says to use the self-defense act of 2006 and the Castle Doctrine. The person has to be inside your house. You can use it.

And my other instruction that I'm asking, the special instruction. How a porch is part of a home. When you do that--and we have curtilage. When you look at the statute what is curtilage. It includes a porch.

THE COURT: How do you want that special instruction to read? Do you want it to be part of one of the other instructions as an additional?

MS. CARPENTER: No, your Honor. A separate one.

THE COURT: Okay. Tell me how you want that to read?

MS. CARPENTER: I would just like to say that a person's porch is considered part of his or her home.

THE COURT: That's the only instruction?

MS. CARPENTER: That's it.

MS. SIRINGAS: Your Honor.

THE COURT: Yes.

MS. SIRINGAS: I'm gonna object to that.

THE COURT: Go ahead.

MS. SIRINGAS: Because there's no evidence that he as

on his porch. Why is that relevant? We don't the jury to infer that because Renisha McBride--she wants to use it as part of retreat instruction. That you don't have to retreat from your porch. He's not, I mean after I mistakenly said you went out on your porch. It was pretty clear. He said no, I never left my house. I never went on my porch. There is no evidence that he's on his porch. Therefore there's no duty to retreat. That's not at issue here. So adding that in here is suppose to create some other kind of inference that's not related to the issue that she wants to argue to the jury. No one is saying that he has a duty to retreat from his home. He's in his home. He is not on the porch. There's no evidence that he was ever on the porch. So adding that to that instruction, again, is inconsistent with the evidence. There's no basis to give that to the jury. It's not relevant. And it would create some kind of other false impression with the jury that; you know, we're saying that this confrontation, if it had taken place on the porch somehow he's required to retreat. That's not the issue. You're gonna confuse the jury by adding that in there. That his porch is part of curtilage. When he was never on the porch. And there's no issue that he was ever retreating or required to retreat. And that comes as part of that duty to retreat instruction. And the People object. It's just not, based on the evidence it's not relevant. It's confusing. It's gonna confuse the jury. And

would create issues where none should exist.

MS. CARPENTER: Your Honor, it's not confusing.

THE COURT: Go ahead.

MS. CARPENTER: It's from a Michigan case where it was self-defense. And a judge gave the instruction. Which was upheld as proper.

THE COURT: Yeah. But I think her argument was that, in that case he actually was on the porch. What's weird about that case is that everyone was, seemed like they were on the lawn.

MS. CARPENTER: I, but it doesn't matter. We're not saying Mr. Wafer was on the porch. We only brought it to say-

THE COURT: I agree. I understand what you're saying. No. I'm gonna give that instruction.

MS. CARPENTER: Okay.

THE COURT: A person's porch is part of his home. Because I think, ultimately, if someone was attacked when they are on their porch they have the duty to defend themselves.

MS. SIRINGAS: Your Honor.

THE COURT: Go ahead.

MS. SIRINGAS: As long as when you actually--I mean, obviously we need to see the final instruction. I think she was gonna try to use it in a way to show that Renisha McBride was actually in his home because his porch his part of his home. I think that's what, in putting this in here that's

what she wants to argue to the jury. That Renisha McBride in fact was on his porch, therefore in his home. To create that, that's the only reason she wants it. Is she wants to say is that when somebody comes on your porch they're in your home. It's the same. The Michigan Supreme Court says it's the exact same thing. That's what she wants to argue to this jury. And create a false impression. To say that she wasn't properly there knocking on the door. Because she had, that's his home. She had entered his home. That's what she's gonna argue. And that's why I think it's confusing. There's on basis for it. She's trying to get it in. Trying to backdoor that she was on, somehow in his home. That's the only reason that she wants to get that in there. Because there's no issue on the duty to retreat.

THE COURT: Well, that's what I'm asking. You think that if someone's attacked on there porch they'd still have a duty to retreat?

MS. SIRINGAS: No.

THE COURT: Well then what's the issue?

MS. SIRINGAS: He's not attacked on the porch. She's gonna say when the Michigan Supreme Court says that when you're on your porch that's part of your curtilage. That's part of your home.

She's gonna argue to the jury Renisha McBride was on his porch. Was on his home. The Michigan Supreme Court says-

-there's no duty to retreat issue.

So why are we giving an instruction that talks about duty to retreat when there is no duty to retreat. No one will say that he has a duty to retreat from where he was. Or even if he went on his porch. He never went on the porch.

So why are we giving that instruction? Because she's trying the create a false impression that Renisha McBride was doing something wrong by being out there on that porch. That's what she was trying to get in through that instruction.

'Cause there is no duty to retreat issue. That's not a issue the jury has to find. So why is that instruction at all relevant to whether or not he was properly inside his house. And fired from inside his house. It is not relevant.

It's being offered for a different purpose. To try to create a miss perception with this jury. That Renisha McBride was doing something wrong by entering Mr. Wafer's curtilage. That's what that's all about.

MS. CARPENTER: Your Honor.

MS. SIRINGAS: And that's why it's inappropriate for the Court to give it. Because it's gonna create a false impression with the jury. When the duty to retreat issue, if you look at the duty to retreat instruction.

Nobody disputes it. There's an instruction that says you don't have a duty to retreat from your home.

THE COURT: That's what I thought the purpose was.

MS. CARPENTER: Yes.

THE COURT: And to add that a person's porch is part of their home.

MS. SIRINGAS: But he's not on the porch.

THE COURT: I mean what it really comes down to is whether not--okay. Go ahead. Go ahead Ms. Carpenter.

MS. CARPENTER: Your Honor, and I think it-and first of all I want to put on the record. I don't know how Ms. Siringas knows what I'm gonna saying closing, first of all. She's just speculating. And that's improper for an argument.

Speculating what I might do with it. If she wants to ask you, please prohibit defense counsel from using it like that. That's fine.

But that doesn't mean the instruction doesn't come in 'cause she's speculating that I'm gonna us it to backdoor and giving me more nefarious purposes. But second, what has been their argument all along?

Why did Mr. Wafer open the door? Why did he open the door? That goes right to the duty to retreat. No duty.

He could open his door. That's part of his house. And he had every right to open that door. I think that's why we need it. There's no duty to retreat 'cause he's still in his home.

THE COURT: Well, and that's why I'm not

understanding what the issue is. If we it comes at that end of duty to retreat then it's done. I understand you're saying he wasn't on his porch.

All right. I'm gonna give it. I'm not giving 7.16A.

MS. CARPENTER: Okay. Your Honor, I do want to put on the record that we did have evidence of attempting to enter into the house. Mr. Wafer testified he heard giggling of the side door. Remember the evidence he doesn't keep his side door locked that's open.

Giggling, trying to get in without permission. Along with a broken screen door. Along with woven marks. An AC, a print on the AC unit. Smudge marks on the side door. All of that shows she was breaking and entering. In the process of doing that.

THE COURT: Okay. Your record's made. All right. Do you have any issue, there was something we addressed earlier inferring state of mind. Do you want to put anything on the record with respect to that Ms. Carpenter?

MS. CARPENTER: I'm sorry, your Honor. I don't know which one you're talking about.

THE COURT: Sixteen point 21. It was the first think that the Prosecutor's Office asked for.

MS. SIRINGAS: Your Honor, we have a couple more.

THE COURT: Oh, yeah. Go right ahead. I just don't

want to-

MS. SIRINGAS: Just whenever, at the right time.

THE COURT: Whenever. This is the right time.

MS. CARPENTER: When then how about we go to a different one if that's okay.

THE COURT: That's fine.

MS. CARPENTER: I want to look at 16.21.

MS. SIRINGAS: Your Honor, the People are also gonna ask as a lesser to murder in the second degree. We're gonna ask for the gross negligence manslaughter. Which is 16.9, your Honor. Together again with the definition of gross negligence which is 16.18.

THE COURT: One second. Sixteen point nine and what else?

MS. SIRINGAS: It goes together, your Honor, what we're asking for is the portion that talks about,--

MR. MUSCAT: No, that's voluntary.

MS. SIRINGAS: I'm sorry. Involuntary, 16.10, your Honor.

MR. MUSCAT: Yes.

THE COURT: Okay. Sixteen 10.

MS. SIRINGAS: Sixteen 10, which under 2, when you put in the gross negligence--

MR. MUSCAT: It's a lesser to count 1.

THE COURT: Okay.

MS. CARPENTER: Your Honor, I don't think it's necessary. Mr. Wafer is charged with two counts. He's murder 2 and charged with involuntary manslaughter. Now they want a lesser included of murder 2 of involuntary manslaughter.

THE COURT: Well he's charged with manslaughter.

MS. CARPENTER: The statutory one.

THE COURT: Not involuntary.

MS. CARPENTER: Right, right. Which is essentially involuntary manslaughter. We all agreed on that. And to give a--

MR. MUSCAT: No, we didn't.

MS. CARPENTER: Well, actually-

THE COURT: Hold on. Let her talk. Go ahead.

MS. CARPENTER: It's my position. Maybe we don't all agree on it. It is involuntary manslaughter. That common law statute they're using for count 2.

So if now we're tacking on a very similar offense as a lesser of murder 2, it's just gonna cause a lot of confusion. And in don't know what the purpose it. Because this is covered in count 2.

MS. SIRINGAS: Count 2, is a totally different statute, your Honor, that is not a lesser included offense of murder 2. We included it in the charging decision because pointing and aiming a firearm is not a lesser offense under the case law of murder 2, but gross negligence manslaughter is

a lesser offense.

THE COURT: Well, hold on. So someone can be convicted of murder 2 and manslaughter?

MS. SIRINGAS: Yes. But you have to set one aside. At some point you have to set one aside.

THE COURT: Okay.

MS. SIRINGAS: Because you can only have one death. At some point, yes.

THE COURT: All right.

MS. SIRINGAS: They're a difference in theory.

THE COURT: So the manslaughter is not a charged lesser?

MS. SIRINGAS: It is not. It is a separate count. It's a separate count 2. The charged manslaughter. The aiming the firearm causing death. That's a separate offense. And it is a separate count. And it has to be treated as such. And the jury has to fine either.

So, what we're asking for is a lesser of murder in the second 2, is the involuntary manslaughter gross negligence. Which is the lesser of the murder 2. The intent, they may not find third prong. Or here we haven't even, they might find third prong.

They may just find he was grossly negligent as oppose to creating a high risk of death of great bodily harm. It's a lesser included offense of murder in the second degree.

And they may find that. And that's under, it's supported by the evidence here.

If you look at--a reasonable interpretation of the evidence may support that. The jury may find that. And so that's why it's appropriate that it be given.

THE COURT: Okay. Go ahead. I didn't know if you were aware that it was-

MS. CARPENTER: And your Honor, it's just so confusing.

THE COURT: I thought it was a charged lesser.

MS. CARPENTER: No, it's not. And just look your Honor, you and I--I don't understand any of this as well as--ha ha ha, Ms. Siringas on these. But I agree with what she's saying. But I just think this adds so much confusion.

And it's unnecessary since he's already, he's charged; I know the words are a bit different. But he's charged with the same crime. It's like I'm gonna charge him with--and it is due process protection Mr. Wafer has.

But it's like you're charging him three times now for one death. And it's just so confusing. And that's the reason I'd ask you not to give it.

THE COURT: Okay. You think it'll confuse the jury.

MS. SIRINGAS: Your Honor.

THE COURT: Go ahead.

MS. SIRINGAS: I'm sorry. One requires aiming.

THE COURT: Yeah, I know. The elements are certainly, they differ.

MS. SIRINGAS: They're different. And Mr. Wafer was trying to be very,--oh no I never aimed the gun. I never aimed the gun.

If you remember during cross-examination, he had been instructed so clearly to say I never aimed the gun. Even thought he clearly point it. I never aimed the gun. Because that's an element of that specific manslaughter.

Gross negligence doesn't require aiming. It doesn't require anything. It's a lesser offense of murder in the second degree. It's a necessarily lesser included offense under Cornell. And the evidence support it.

As long as the evidence support it, pursuant to People versus Cornell, then it should be given by the Court. We're requesting it. It's supported by the evidence. And I don't think it's that difficult. We have a pretty smart jury.

THE COURT: Okay. We'll give it as a lesser.

MS. SIRINGAS: And additionally one final instruction, your Honor.

THE COURT: Go ahead.

MS. SIRINGAS: The People are requesting a nonstandard instruction which is 2.19. I did provide a copy of that to the Court.

MS. CARPENTER: May I see a copy.

MS. SIRINGAS: I can do that.

THE COURT: Did you also provide a brief?

MS. SIRINGAS: I did provide a brief.

THE COURT: Okay. Give me a moment.

(At 2:05 p.m., off the record)

(At 2:07 p.m., on the record)

THE COURT: Okay. We're back on the record.

MS. CARPENTER: Your Honor, may I get a copy of the brief. I have not gotten service of any of these things.

THE COURT: We got them about an hour ago. Could you give her a copy of the-

MS. SIRINGAS: But I don't have an extra copy, your Honor.

MS. CARPENTER: But, your Honor, when you file something you have to serve the other side. And this is the second time this has happened. Where things are just appearing in front of, your Honor, and I don't have anything.

THE COURT: All right.

MS. SIRINGAS: I don't have an extra copy. I just have a brief, your Honor.

MS. CARPENTER: They have a copy machine upstairs. They can go upstairs and make me a copy. And next time bring me a copy please.

THE COURT: Here. I'll make you a copy right now.

MS. CARPENTER: Thank you. It's a court rule. I get

service.

(At 2:07 p.m., off the record)

(At 2:08 p.m., on the record)

THE COURT: Okay. Here. I got a copy for you.

(Ms. Carpenter is handed copy by deputy)

MS. CARPENTER: Thank you, your Honor. Your Honor, if I can just get to the record. What does the Prosecutor think that Mr. Wafer said that was false?

THE COURT: You are way ahead of me. Give me a second here.

MS. CARPENTER: Okay. I'm sorry.

THE COURT: I saw that this motion started off quoting Justice Cooley. So we're going back a ways. Give me a second.

(Brief pause on the record Judge and attorney's review motion)

THE COURT: Okay. Go ahead Ms. Carpenter.

MS. CARPENTER: Your Honor, I really don't know what the basis is for the Prosecutor. So if I could ask the Prosecutor ask what the basis is for giving this instruction?

THE COURT: Well, they have to say that the evidence that supports the instruction. Go ahead Ms. Siringas or whoever is handling.

MS. SIRINGAS: Your Honor, this is a requested instruction. It's a nonstandard jury instruction. But, in

speaking with Mr. Baughman, he indicated that it's already pending before the committee.

That's an instruction that they're looking to standardize because there's ample case law to support it. It's been allowed when the evidence supports it. And it's called, we refer to it as a false exculpatory statement as evidence of guilt.

When Mr. Wafer talked to the police he said, the gun discharged. It went off accidentally. Two times. Now he comes to court and he wants to say this is self-defense. And that he intentionally pulled the trigger. Because he felt his life was in danger. Those are two different things.

The first one is--if the jury believes the second then the first was a false exculpatory statement. Trying to get him out of being charged with any crime by saying that the gun discharged. It just discharged.

I don't know what happened. That is a false exculpatory statement that he's trying to pass along to the police to make the police either not charge him or whatever. It's a false exculpatory.

And the law says, that if he gives a false exculpatory statement to the police; and there were others, then if the jury finds those to be true or false or however. If the jury believes those. They can say that that is evidence of guilt. Of a guilty knowledge.

That he knows this wasn't a good shooting. He knows what he did was inappropriate. That he knows that when he pulled that trigger, that gun didn't go off accidentally. They evidence doesn't support it. It's a lie.

And the jury can consider it. And that's what that instruction says. When there is a false statement that attempts to exculpate from the crime charged, then the jury may consider those statements as evidence of guilt.

And there's ample case law that I've cited to the Court. It's been given in this building multiple times. By Judge Kenny, by Judge Talon. It's given on a regular bases.

In talking to Mr. Baughman, they're in the process of standardizing it. But it is supported by the evidence. And the People request that you give it.

THE COURT: Okay. Go ahead Ms. Carpenter.

MS. CARPENTER: Your Honor, I can't even respond to that. You heard Mr. Wafer testify why he said the word accident. From day one they've tried to claim this was, we're not doing an accident case.

This isn't an accident case. He didn't make a prior false statement when he said it went off. It just went off. It just went off like that. That's how he described, he used the term accident.

You saw that whole hour long video. Do you think he was claiming self-defense? Well, he's not a lawyer. But in

that video do you think that was self-defense. They're coming in. They're coming to get me. I'm frightened.

He's never made a prior false statement. Yes, he said it was an accident. But that was his way to describe what happened after it just happened.

This instruction is so confusing. Excul--I--they brought his statements in. I just don't even think this is a proper one. I, they haven't proven, first of all, there is a false statement made by Mr. Wafer. That's number 1.

THE COURT: Okay. Will I don't know that they need to prove it. I mean, this is ultimately up for the jury to decide whether the evidence is shown any of the statements to be false.

MS. CARPENTER: Right.

THE COURT: I mean, it's the Prosecutor who's claiming the statements were false. Since this is such an unusual instruction I would have to think that inconsistent statements would apply here; without any additional commentary, which I'd like to see.

MS. CARPENTER: Yeah. We already have a jury instruction about judging a witness's credibility and statements by the defendant. It's all covered. This is not-

THE COURT: It is. But it doesn't deal with exculpatory statements.

MS. CARPENTER: But, your Honor,--

THE COURT: It's just inconsistent statements.

MS. CARPENTER: --Accident was not used as a exculpatory statement by Mr. Wafer. It was not.

MS. SIRINGAS: Oh, yes it was.

MS. CARPENTER: Did you ever hear-

THE COURT: Hold on. Hold on. Let's not talk over one another.

MS. SIRINGAS: All right.

THE COURT: Go ahead Ms. Carpenter.

MS. CARPENTER: Thank you, your Honor. It wasn't. They're twisting it to make is seem like this is some intelligent, best criminal defense or prosecutor ever who is sitting there for 2 hours. Almost an hour in the back of the squad car. Horrified that he just killed somebody.

And then he's making up this whole theory it was an accident. He said accident a couple times. But you're, it's clear he didn't mean accident in the traditional accident defense case. It's self-defense.

He used the term accident to say why he couldn't explain it. It was just an accident. It just happened. Not like I, it wasn't me who did it. It wasn't I didn't load that gun. She grabbed for it. It dropped. Those are accidents.

None of that has ever been claimed in this case. There is no evidence of any false exculpatory statement.

There are plenty of other standard jury instructions which will guide the jurors.

MS. SIRINGAS: Your Honor, if I just may compare this.

THE COURT: Go ahead.

MS. SIRINGAS: This instruction to the flight instruction. There's a flight instruction that talks about guilty knowledge. And this is similar to that. The flight instruction says that if you flea that's evidence of your guilty knowledge.

If you lie to the police that's evidence of your guilty knowledge. That's all this instruction says. That his, I mean even counsel said he sat in the back of the car and he concocted his theory.

MS. CARPENTER: I didn't say that, your Honor.

THE COURT: Hold on.

MS. SIRINGAS: Well, it was very similar to that. That he came up with this theory that this was accident. And that's what he told the police.

He told the police on a number of occasions that the gun went off accidentally. He didn't say he intentionally pulled the trigger.

MS. CARPENTER: Yes, he did.

MS. SIRINGAS: He didn't say--not to the police. He said I don't even know what happened. Here he said that.

Here he said self-defense.

He never said he pulled the trigger. I don't know what happened. The gun just went off accidentally. That's what he said.

And if the jury determines that that's a lie, they can determine that based on that instruction he had a guilty knowledge. And he was making up lies to the police. It's the same as the flight instruction. Just because it's not standardized yet it doesn't mean that it's in appropriate.

THE COURT: No, I know.

MS. SIRINGAS: That doesn't mean that it's not supported by the evidence.

THE COURT: I'm giving nonstandard instructions for the defense.

MS. SIRINGAS: It's supported by the evidence. And the People are asking for that. He's given two different theories.

THE COURT: And I think what's important in this instruction is that is says that the People claim that it, the statement was false. But it ultimately leaves it up to the jury to determine whether the statement was false. All right. I'll give 2.19.

MS. CARPENTER: Your Honor, then.

THE COURT: Go ahead.

MS. CARPENTER: The Prosecutor just argued and I

haven't looked at this enough. But it made think about the fleeing and eluding. If there's evidence of flight.

Well, we have clear evidence that Renisha McBride fled the scene of an accident.

THE COURT: Okay.

MS. CARPENTER: Car crash and drunk driving. I mean when you look at it like that. And it just made me think about, it's still going back to what was she doing at the house.

You can take that in consideration too. Was she breaking and entering. Did she wander away to look for help. No evidence of that at all.

You've already precluded the Prosecutor from arguing that in closing unless it was brought out in trial. And it hasn't been brought out, she was looking for help. To the contrary.

She fled the scene to avoid arrest or for whatever reason. But she fled a scene. And that shows, to go back to the breaking and entering, what was she doing?

You get her behavior from 1:00 a.m., until she gets to Mr. Wafer's house at 4:30. There is a lot of behavior that shows she's in the process of committing a breaking and entering. When you go back to one and the fleeing.

THE COURT: No one knows what she was doing being one and 3:30.

MS. CARPENTER: But we know what she did at one.

THE COURT: I have heard no evidence as to what happened during that time period. There's been nothing on the record. I mean, you can say everyone knows. I don't know what she was doing. And I listened to this trial.

No one knows what she was doing. I don't know how lack of any evidence whatsoever proves a breaking and entering. No one knows what she was doing.

MS. CARPENTER: But we know what she was doing at one. We don't know what she was doing between one and 4:30.

THE COURT: Okay. Fair enough.

MS. CARPENTER: That's what I meant.

THE COURT: Okay. So you're back to arguing that's your point for getting 7.16A in there.

MS. CARPENTER: Yes, your Honor.

THE COURT: Okay.

MS. CARPENTER: And especially if you're adding all of these instructions for the Prosecutor's when we have, when they have no evidence there's a false statement. You just gave this instruction. And you're not giving, when we have evidence of a breaking and entering.

I just wanted to point out more too that she was fleeing and eluding. A car crash. Drunk driving. And driving while drugged. And I think you can take that into consideration when you look at what was she doing at 4:30 in

the morning at his house.

THE COURT: My justification for 2.19 was because I think that there was inconsistent exculpatory statements. I can't state whether they were false or not. It's the, and that's why I think that this is applicable. Because it's the People claiming that they were false.

But I think that there's a basis for having inconsistent exculpatory statements which is not covered by the impeachment instruction. But I'm not going to change my mind with respect to 7.16A.

I think that there was sufficient testimony from Mr. Wafer. No one ever entered. And was not in the process at the time he shot her. Okay. Any other instructions?

MS. SIRINGAS: No, your Honor.

THE COURT: I need to updated the books. Go ahead.

MS. SIRINGAS: Oh, the state of mind, your Honor. I think, I don't think the Court has ruled.

THE COURT: Oh, 16.21. Go ahead Ms. Carpenter. That was something we addressed earlier.

MS. CARPENTER: Oh, yes.

THE COURT: And I also added an instruction with respect to expert witnesses. I believe there were roughly 10 of them. My legal assistant has that if you'd like to see it before I read it to the jury. Just to make sure that all the experts and their areas of expertise are outlined

appropriately. Go ahead, 16.21.

MS. CARPENTER: Which subparagraph would you like to use?

MS. SIRINGAS: I think all the way up to one through five.

MR. MUSCAT: Yeah. Just one through five.

MS. SIRINGAS: 'Cause we don't have premeditation. So we just have one through five are the ones that apply, your Honor, for this case.

MS. CARPENTER: Your Honor, I see this as wholly irrelevant. This is inferring state of mind. Regarding that the defendant intended to kill. It was clear in their opening statement, they said that Mr. Wafer had no intent to kill.

MS. SIRINGAS: That was before Mr. Wafer got on the stand and said he intentionally pulled the trigger. That was based on what we thought his statement was gonna be. So had he not changed his defense, your Honor, midstream I'm sure our argument would have been different at opening.

THE COURT: Okay. Go ahead Ms. Carpenter.

MS. CARPENTER: That's it, your Honor.

THE COURT: Give me one moment.

(Brief pause on the record)

MS. SIRINGAS: Your Honor, while the Court is reading.

THE COURT: Yeah. Go ahead.

MS. SIRINGAS: Can I just say, this is, I mean this is part of argument that we even made on the murder 2. Inferring the use of a dangerous weapon in a way to likely to cause death or great bodily harm. It's a standard instruction in the murder and the homicide section.

THE COURT: I mean, they didn't differentiate between the types of murder. The only thing that differentiates that in the instruction is number 6.

MS. SIRINGAS: It's an instruction given in almost every murder case where you have a gun.

THE COURT: I know.

MS. SIRINGAS: So it's an appropriate instruction. It's standard instruction. It's something that the Court can even infer in denying a motion for directed verdict on the murder 2. It's a standard instruction that's used ordinarily in a homicide case.

THE COURT: No. In reading the instructions it seems applicable. Okay. I'll give 16.21 based on the specific facts of this case. All right. Any other instruction?

MR. MUSCAT: I just had a question.

THE COURT: Go right ahead.

MR. MUSCAT: Did they have jury instructions in their books there?

THE COURT: No.

MR. MUSCAT: Okay. No elements or anything?

THE COURT: I read from the green. And then I send in the green and the red once we're done.

MR. MUSCAT: Okay.

MS. CARPENTER: One more thing for the record.

THE COURT: Go ahead.

MS. CARPENTER: A couple things I need. We've had a lot of sidebars throughout the trial. So I wanted to clean up some that.

THE COURT: Please.

MS. CARPENTER: But first. One more thing for the record about evidence of breaking and entering. Dr. Spitz's expert testimony. It was clear that she got her swollen hands and laceration on the back of her hand from trying to enter into Mr. Wafer's house. So that's another thing that supports the giving of the jury instruction on the rebuttable presumption.

THE COURT: The only thing I heard from Dr. Spitz was it was caused by a pounding on the door. And someone pounding is not breaking and entering.

MS. CARPENTER: And then, your Honor, for the record. I would like to make for the record put what happened during the cross-exam of Mr. Wafer on the record.

THE COURT: Oh, yes. I wanted to bring that up with you.

MS. CARPENTER: Yes.

THE COURT: Go ahead. I had forgotten what it was.

MS. CARPENTER: Ms. Siringas picked up, twice, Mr. Wafer's shotgun. And was carrying it around the courtroom. She actually didn't do anything with the shotgun either time in relation to Mr. Wafer.

And the second time she picked it up, and it's interesting to note for the record. While she's holding the shotgun she's pulling the trigger. We've seen that.

And then while she is taking the gun off of the table she waved it and brandished it in front of all the jurors. It was pointed at their faces. And juror number 9, Ms. Carney, reacted in horror.

She, it was, that's why I jumped up so quickly. She put her hands over her face. She cowered. And went oh my God. I mean, it was that much.

And I couldn't, I was looking at Ms. Carney. I don't know what the other jurors were doing. For that, your Honor, I think that is completely improper.

She was trying to use this weapon to show how dangerous it is. We all agree it's a dangerous weapon. And I think that is enough.

And I think also with this, the jury instruction and how you, they have--what the jury instruction that just came up about the rebuttable presumption and how the Prosecutor's, after they saw what I did in opening, they went to the

Michigan Committee about the jury instructions and got it changed. For those two reasons, your Honor, I would ask for a mistrial in this case.

THE COURT: Okay. Well, I'm not giving the instruction. So it really doesn't make a difference whether they had it changed or not.

And the fact that they had it changed to state and, only makes a difference if I was going to give it to the jury. In which I'm not. So I think mistrial is way to severe a sanction to do in response to whatever was done to get an instruction changed that I'm ultimately not even giving to the jury.

And I'm not giving it to them--the reason I'm not giving it to them is on no account of anything the Prosecutor's Office did. I just don't think it's applicable. Okay. Ms. Siringas, anything you want to put on the record?

MS. SIRINGAS: No, your Honor. The instruction is wrong. It's a jury instruction that's wrong.

When I looked at the jury instruction and I read the statute I realized that the jury instruction was wrong. I would assume that Ms. Carpenter would have looked at jury instruction. Also look at the statute and figured out that the jury instruction was wrong.

Because the Law requires that the Court give an instruction that's consistent with the statute. If she failed

to do that, she can't blame the Prosecutor for their noticing that an instruction, that this Court may give to a jury is wrong and get it corrected.

THE COURT: Well even at the end of day it doesn't matter. I'm not giving it to the jury. So whether it was wrong and corrected makes no difference. Because the jury will never hear this instruction.

MS. SIRINGAS: And also any representation as to what I did with a gun. The gun was used in this case by many people. People approached with a gun.

And there was nothing inappropriate by anything that I did. The Court told me to put the gun down. I did. There wasn't nothing inappropriate in anything that happened.

THE COURT: Okay.

MS. CARPENTER: Your Honor,

THE COURT: Go ahead.

MS. SIRINGAS: And the gun was not loaded.

THE COURT: Yes.

MS. SIRINGAS: Your officers had cleared it.

MS. CARPENTER: Yeah, yeah. It it is,

THE COURT: Hold on one second.

(Brief pause on the record)

THE COURT: All right. Go ahead. Thank you.

MS. CARPENTER: I don't know if the Court saw Ms. Carney, juror number 9, react. It did itself. I'm sorry.

We're not gonna say, juror number 9.

Please don't have anybody give out the names of the jurors. I just realized that. I know the media watching. That was improper.

But we can't unring that bell. We can't take back the reaction Ms. Siringas to the jurors. I mean, deathly afraid. I don't care. It's a dangerous weapon.

Mr. Balash--nobody handled it like Ms. Siringas. Nobody. Everybody handled it safely except her. And if you're not going to grant a mistrial I would ask that you admonish the Prosecutor not to do that in closing.

Whatever prosecutor it is closing. Not to point it at anybody if they hold the weapon, hold it to the ground.

THE COURT: That's fair.

MS. CARPENTER: Or use something else.

THE COURT: No one, I don't know who's going to be doing the closing. No one is allowed to point the weapon in the direction of the jurors. I think that that, just to make them feel more comfortable during the closings.

MS. SIRINGAS: And that didn't happen. I never pointed it in the direction of the jury. I was approaching. I was holding--the record should be clear. I was approaching Mr. Wafer. I was holding the weapon at my side. I came around. I never pointed it in the direction of the jury at all. But, you know, the gun is in evidence.

THE COURT: I understand.

MS. SIRINGAS: The gun is a piece of evidence, your Honor.

THE COURT: I understand.

MS. SIRINGAS: It's what's this case--

THE COURT: But be respectful to the jurors. We're not gonna point it in their direction in any way, shape or form. And it might have been an oversight. But I did hear one juror who sounded shocked.

MS. CARPENTER: Your Honor, we might-

THE COURT: Okay. Go ahead.

MS. CARPENTER: --Just to be safe, question juror number 9. Bring her out here. How did that affect you when that happened to you? Can you be fair still in this case?

THE COURT: I don't think that that's necessary.

MS. CARPENTER: And then, your Honor, another thing for the record. That we did at sidebar.

THE COURT: Yes.

MS. CARPENTER: That during Mr. Wafer's cross-exam. That we allowed, and I didn't object that the Prosecutor played his whole statement. The whole thing in entirety. Which I think is the proper way to do it.

And then they started using piece meal and replaying everything. And doing it, it was bols-I don't know what they were doing. I think it was improper because they weren't

using the tape.

You can't just play the tape and then not ask questions and have it. They weren't using it for impeachment or anything. I wanted just to put that on the record.

THE COURT: Okay. And there were questions that proceeded what they played in the tape, both before and afterwards. And that was what we discussed at sidebar. Was it doesn't have to be impeachment when it's something that's already been admitted into evidence.

They can use it for whatever purpose. As long as they're continuing the question and answer process. And I think that they were--I didn't think that that was improper. I think they could do whatever they wanted with the evidence. Okay. Anything else before we bring out the jury?

MS. SIRINGAS: No. Can we get the binders?

THE COURT: Yes. Can you both come up and confirm that that's the proper list.

(At 2:32 p.m., off the record)

(At 2:45 p.m., on the record)

THE COURT: Okay. We're back on the record.

MS. CARPENTER: Your Honor, I don't think the special jury instruction, saying that a porch is included as part of a home is in here.

THE COURT: I added it to the end of duty to retreat.

MS. CARPENTER: Okay.

THE COURT: So I was just going to state it right after I read that instruction.

MS. CARPENTER: What number is that?

THE COURT: It is 7.16.

MS. CARPENTER: Thank you. And in noticed 16.9, is included in these instructions. And we need 16.10. So that's what is being prepared right now.

Also I found some other errors that I will read to the jury. We'll correct it before, or that I will correct when I read to the jury. And we'll correct it in the books before we send them in. But--

MS. SIRINGAS: Your Honor,

MS. CARPENTER: I did, I, I realized after I was done with Mr. Wafer, doing the direct exam. I never asked him about the other error in the transcript. Jumped backwards or fell backwards.

I still would like, since it didn't come out yet, I do--when you talk about the transcripts part in here. Tell 'em, tell 'em that is also an error that they heard.

THE COURT: Well,--

MS. SIRINGAS: The Court, your Honor, gave an instruction at the appropriate time.

THE COURT: I agree. And I, I mean, that was up to you whether you wanted to point it out. I said I wasn't going to point it out because the People asked me not to.

MS. CARPENTER: Your Honor, there's been two errors now. There was an error about--

THE COURT: I'm sure. There's probably other ones. That happens in transcripts.

MS. CARPENTER: But I would just request that you point out that it's not jump backwards, it's fall backwards.

MS. SIRINGAS: We changed the transcript to say fall backwards. What they're gonna get is a transcript that says fall backwards, your Honor. Or fell backwards. Or whatever it said.

Your Honor, as far as Mr. Spitz. When you showed us, I know the Court is working on something.

THE COURT: No. I can listen and read at the same time. Go ahead.

MS. SIRINGAS: Dr. Spitz, his only expertise is Forensic Pathology and Anatomical Pathology, I believe. There is no such expertise as fear of doom or, you know, there was not a separate expertise. It's just the Court allowed him because of these two.

I think that was the only thing he was qualified in. And the Court allowed him to testify in this other issue as part of that expertise. But it's not a separate expertise that's recognized. The fear of impeding doom is not really anything that's an expertise. So the People would ask-

THE COURT: One would think. But there is that Court

of Appeals opinion that said he should have been qualified. And that was the area of expertise that said he should have been qualified.

MS. SIRINGAS: But in this case--as a Forensic Pathologist.

THE COURT: Yes.

MS. SIRINGAS: They should have allowed him to testify--

THE COURT: To testify on the fear of impending doom.

MS. SIRINGAS: --As a Forensic Pathologist. But the expertise is Forensic Pathology. That's just another area that he can talk about. It's not a separate expertise.

THE COURT: Oh. Understood. It's the opinion within the area of expertise.

MS. SIRINGAS: Exactly. Okay. So it's not a separate expertise.

THE COURT: No. You're correct. That was what the Court of Appeals said. He gets to opine on that as part of his expertise in Forensic Pathology.

MS. SIRINGAS: Your Honor, is the Court planning on giving the self-defense before it gives the elements of the underlying offense? Because normally I would ask that it be given after. That you give the elements of the offenses and then give the self-defense subsequent to that. I notice it's in the book. I don't know if this is the order that the Court

will read these.

THE COURT: Well, I generally do. But right now I want to make sure that everything's in place.

MS. SIRINGAS: Okay.

THE COURT: Okay. Yeah, those are at the beginning.

MS. SIRINGAS: Fine, your Honor.

THE COURT: I could read those right after the charges. And then we'll dismiss the jury. Any other corrections before we bring out the jury?

MS. SIRINGAS: Your Honor, in my book I have 16.9, which is the--

THE COURT: I thought she just brought out 16.10, no? I have the corrected version. We'll get those for your books. Okay. Any final corrections before we bring out the jury?

MS. SIRINGAS: Not from the People, your Honor.

THE COURT: Ms. Carpenter?

MS. CARPENTER: No, your Honor.

THE COURT: Okay. Let's bring them out.

DEPUTY DARRISAW: All rise for the jury. Jurors please come out and take your assigned seats.

(At 2:57 to 2:58 p.m., jury enters/seated)

DEPUTY DARRISAW: You may be seated.

THE COURT: Thank you again ladies and gentlemen for being so patient. First thing I'll do is ask you the questions since we had a significant break. Have any of you

had conversations amongst yourselves or others about this case, raise your hands?

JURY PANEL: (No response)

THE COURT: No one. Have any of you read newspapers or watched tv reports about this case, raise your hands.

JURY PANEL: (No response)

THE COURT: I see no hands. Did any of you use any type of electronic device to get on the internet or to do independent research about the case, people, places, things or terminology?

JURY PANEL: (No response)

THE COURT: I see no hands. And did any of you read or create any blogs, social networking pages, status updates or tweets about this case?

JURY PANEL: (No response)

THE COURT: Okay. I see no hands. We're gonna proceed in a little bit of an unusual fashion. It's not always done. But it is--

MS. CARPENTER: Your Honor,

THE COURT: Go ahead.

MS. CARPENTER: I think I officially need to rest.

THE COURT: Oh, I'm sorry. Go right ahead.

MS. CARPENTER: That's okay. The defense rests.

THE COURT: Thank you very much. Any rebuttal from the People?

MS. SIRINGAS: No, your Honor.

(At 2:58 p.m., Jury Instructions given by the Court)

THE COURT: Okay. Thank you very much. Okay. Now comes the time for final jury instructions. Generally what will happen is the People will close and then I'll instruct you. But we're gonna do it little bit opposite.

I'm going to give you a number of, it's a bit of an oxymoron, but preliminary final jury instructions. Dismiss you for the day. You're still not free to discuss the case or review any news reports about the case.

You're going to return tomorrow. Closing arguments. Then the final reserved jury instructions that I have for you. Then you'll proceed with deliberations tomorrow.

So you're still not free to discuss the case with anyone until I release you to do that tomorrow. But I'm going to instruct you with what I can today. And then we'll excuse you for the day.

Members of the jury, the evidence and arguments in this case are finished. And I'm now going to instruct you on the law. That is, I will explain the law that applies to this case.

Remember that you have taken an oath to return true and just verdict based only on the evidence and my instructions on the law. You must not let sympathy or prejudice influence your decision. As jurors you must decide

what the facts of this case are. This is your job and nobody else's.

You must think about all the evidence and the testimony. And then decide what each piece of evidence means. And how important you think it is. This includes whether you believe what each of the witnesses said.

What you decide about any fact in this case is final. It is my duty to instruct you on the law. You must take the law as I give it to you. If a lawyer says something different about the law, follow what I say.

At various times I've already give you some instructions about the law. You must take all my instructions together as the law you are to follow. You should not pay attention to some instructions and ignore others.

To sum up, it is your job to decide what the facts of the case are, to apply the law as I give it to you and in that way to decide the case. A person accused of a crime is presumed to be innocent. This means that you must start with the presumption that the defendant is innocent.

This presumption continues throughout the trial and entitles the defendant to a verdict of not guilty unless you are satisfied beyond a reasonable doubt that he is guilty. Every crime is made up of parts called elements. The Prosecutor must prove each element of the crime beyond a reasonable doubt.

The defendant is not required to prove his innocence or to do anything. If you find that the Prosecutor has not proven every element beyond a reasonable doubt, then you must find the defendant not guilty.

A reasonable doubt is a fair honest doubt growing out of the evidence or lack of evidence. It is not merely an imaginary or possible doubt, but a doubt based on reason and common sense. A reasonable doubt is just that. A doubt that is reasonable. After a careful and considered examination of the facts and the circumstances of the case.

When you discuss the case and decide on your verdict, you may only consider the evidence that was properly admitted in the case. Therefore, it is important for you to understand what is evidence and what is not evidence.

Evidence includes only the sworn testimony of witnesses and the exhibits that were admitted into evidence. Many things are not evidence. And you must be careful not to consider them as such. I will now describe of the things that are not evidence.

The fact that the defendant is charged with a crime and is on trial, is not evidence. The lawyers statements and arguments are not evidence. They're only meant to help you understand the evidence and each sides legal theories.

The lawyers questions to the witnesses are also not evidence. You should consider these questions only as they

give meaning to the witnesses answers. You should only accept things the lawyers say that are supported by the evidence or by your own common sense and general knowledge.

My comments, rulings and instructions on the law are also not evidence. It is my duty to see that the trial is conducted according to the law, and to tell you the law that applies to this case.

However, when I make a comment or give an instruction, I'm not trying to influence your vote or express a personal opinion about the case. If you think that I have an opinion about how you should decide this case, you must pay no attention to that opinion. You are the only judges of the facts. And you should decide this case from the evidence.

You should use your own common sense and general knowledge in weighing and judging the evidence. But you should not use any personal knowledge you may have about a place, a person or an event. To repeat once more, you must decide this case based only on the evidence admitted during the trial.

Now as I just said, it is your job to decide what the facts of the case are. You must decide which witnesses you believe, and how important you think their testimony is. You do not have to accept or reject everything a witness said.

You are free to believe all, none or part of any

person's testimony. In deciding which testimony you believe, you should rely on your own common sense and everyday experience.

However, in deciding whether you believe a witnesses testimony you must set aside any bias or prejudice you may have based on the race, gender or national origin of the witness. There aren't any fixed set of rules for judging whether you believe a witness. But it may help you to think about these questions.

Was the witness able to see or hear clearly? How long was the witness watching or listening? Was anything else going on that might have distracted the witness?

Did the witness seem to have a good memory? How did the witness look and act while testifying? Did the witness seem to be making an honest effort to tell the truth, or did the witness seem to evade the questions or argue with the lawyers?

Does the witness's age and maturity affect how you judge his or her testimony? Does the witness have any bias, prejudice or personal interest in how this case is decided?

In general, does the witness have any special reason to tell the truth or any special reason to lie? All in all, how reasonable does the witnesses testimony seem when you think about all the other evidence in this case?

Sometimes the testimony of different witnesses will

not agree. And you must decide which testimony you accept. You should think about whether this agreement involved something important or not and whether you think someone is lying or is simply mistaken.

People see and hear things differently. And witnesses may testify honestly, but simply be wrong about what they thought they saw or remembered. There's also a good idea to think about which testimony agrees best with the other evidence in the case.

However, you may conclude that a witness deliberately lied about something that is important to how you decide the case. If so, you may choose not to accept anything that witness said. On the other hand, if you think the witness lied about some things, but told the truth about others you may simply accept the part you think is true and ignore the rest.

The evidence must convince you beyond a reasonable doubt that the crimes occurred on November 2, 2013, in Wayne County Michigan. The defendant is charged with the crimes of Second Degree Murder, Manslaughter and Felony Firearm. These are separate crimes. And the Prosecutor is charging that the defendant committed each of them.

You must consider each crime separately in light of all the evidence in this case. You may find the defendant guilty of one or more of these crimes or not guilty. The

Prosecution has introduced evidence of a statement that it claims the defendant made.

Before you may consider such an out of court statement as evidence against the defendant, you must first find that the defendant actually made the statement as given to you. If you find that the defendant did make the statement, you may give the statement whatever weight you think it deserves.

In deciding this, you should think about how and when the statement was made. And about all the other evidence in the case. You may consider the statement in deciding the facts of the case.

The Prosecution has introduced evidence of exculpatory statements which it claims were made by the defendant to the police. And which it claims were false. Such statements, if made and if false, may be considered by you as circumstantial evidence of guilt.

Before you may consider any such statements as evidence against the defendant, you must determine whether the statements were made by the defendant. Determine whether the evidence has shown any of the statements to be false.

If you determine that any of these statements were made and were false, you must determine whether the statements relate to the elements of the crimes charged. Proof of a false statement may then be used by you to determine the guilt

or innocense of the defendant to the charged offense. You may consider whether the defendant had a reason to commit the alleged crime. But a reason by itself is not enough to find a person guilty of a crime.

The Prosecutor does not have to prove that the defendant had a reason to commit the alleged crimes. He only has to show that the defendant actually committed the crimes and that he meant to do so.

When the lawyers agree on a statement of facts, these are called stipulated facts. You may regard such stipulated facts as true. But you are not required to do that.

Evidence has been offered that a witness in this case previously made statements inconsistent with his or her testimony at this trial. You may consider such earlier statements in deciding whether the testimony at this trial was truthful--excuse me. Counsel can you approach.

(At 3:07 p.m., conference at bench/off the record)

(At 3:07 p.m., on the record)

THE COURT: Okay. All right. Disregard what I just said. I'm going to read you a separate instruction.

If you believe that a witness previously made a statement inconsistent with his or her testimony at this trial, the only purpose for which the earlier statement can be considered by you is in deciding whether the witness testified

truthfully in court. The earlier statement is not evidence that what the witness said earlier is true.

You've heard that a lawyer or a lawyer's representative talked to a witness. There is nothing wrong with this. A lawyer or a lawyers representative may talk to a witness to find out what the witness knows about the case. And what the witness's testimony will be.

Possible penalty should not influence your decision. It is the duty of the judge to fix the penalty within the limits provided by the law. Facts can be proved by direct evidence from a witness or an exhibit.

Direct evidence is evidence about what we actually see or hear. For example, if you look outside and see rain falling, that's direct evidence that is raining. Facts can also be proved by indirect or circumstantial evidence.

Circumstantial evidence is evidence that normally or reasonably leads to other facts. So for example, if you see a person come in from outside wearing a raincoat covered with small drops of water, that would be circumstantial evidence that it's raining. You may consider circumstantial evidence.

Circumstantial evidence by itself or a combination of circumstantial evidence and direct evidence can be used to prove the elements of a crime. In other words, you should consider all the evidence that you believe.

You should not decide this case based on which side

presented more witnesses. Instead, you should think about each witness and each of evidence and whether you believe them. Then you must decide wether the testimony and evidence you believe proves beyond a reasonable doubt that the defendant is guilty.

The transcripts of the 911 calls, scout car video and police interview should be used only as a supplement to the admitted recordings. The best evidence is the recordings themselves. As jurors, you should think about not only what the person said, but also how the person sounded when they said it.

You have heard testimony from the following expert witnesses. Dr. Kilak Kesha, who is an expert in the field of Forensic Pathology. Kevin Lucidi, who is an expert in the field of Traffic Accident and Reconstruction.

Wade Higgason, who is an expert in the field of Computer and Cell Phone Forensics. Stan Brue, who's an expert in the field of Cell Phone Analysis and Historical Mapping. Cydni Maxwell, who is an expert in the field of Fingerprint Analysis.

Jennifer Rizk, who is an expert in the filed of Forensic Trace Evidence Analysis. Allison Riveria-Papillo, who is an expert in the field Biology and DNA Analysis. Heather Vita, who is an expert in the field of Biology and DNA Analysis.

Shawn Kolonich, who is an expert in the field of Firearm Identification and Tool Marks. Dr. Werner Spitz, who is an expert in Forensic and Anatomical Pathology. And David Balash, who is an expert in the field of Firearms Identification and Tool Mark and Crime Scene Reconstruction.

Experts are allowed to give opinion in court about matters they are experts on. However, you do not have to believe and expert's opinion. Instead, you should decide whether you believe it and how important you think it is.

When you decide whether you believe an expert's opinion, think carefully about the reasons and the facts he or she gave for that opinion. And whether the facts are true. You should also think about the expert's qualifications. And whether his or her opinion makes sense, when you think about the other evidence in this case.

You have heard testimony from witnesses who are police officers. That testimony is to be judged by the same standards you use to evaluate the testimony of any other witness.

In count 1, the defendant is charged with the crime of Second Degree Murder. To prove this charge the Prosecutor must prove each of the following elements beyond a reasonable doubt. First, that the defendant caused the death of Renisha McBride. That is, that Renisha McBride died as a result of gunshot wounds.

Second, that at the time of the killing, the defendant had one of these three states of mind. He intended to kill. Or he intended to do great bodily harm. Or he knowingly created a very high risk of death or great bodily harm. Knowing that death or such harm would be the likely result of his actions.

And third, that the defendant caused the death without lawful excuse or justification. In count 1, you may also consider the lesser charge of Involuntary Manslaughter. To prove this charge the Prosecutor must prove each of the following elements beyond a reasonable doubt.

First that the defendant caused the death of Renisha McBride. That is, that Renisha McBride died as a result of gunshot wounds. Second, in doing the act that caused Renisha McBride's death, the defendant acted in a grossly negligent manner.

And third, the defendant caused the death without lawful excuse or justification. Gross negligence means more than carelessness. It means willfully disregarding the results to others that might follow from an act or failure to act.

In order to find that the defendant was grossly negligent you must find each of the following three things beyond a reasonable doubt. First, that the defendant knew of the danger to another. That is, he knew there was a situation

that required him to take ordinary care to avoid injuring another.

Second, that the defendant could have avoided injuring another by using ordinary care. And third, that the defendant failed to use ordinary care to prevent injuring an other when to a reasonable person it must have been apparent that the result was likely to be serious injury.

In count 2, the defendant is charged with the crime of Manslaughter. To prove this charge, the Prosecutor must prove each of the following elements beyond a reasonable doubt. First that he defendant caused the death of Renisha McBride. That is Renisha McBride died as a result of gunshot wounds.

Second, that death resulted from the discharge of a firearm. Third, at the time the firearm with one, the defendant was pointing it at another person. Fourth, at that time the defendant intended to point it at another person. And fifth, the defendant caused the death without lawful excuse or justification.

You must think about all the evidence in deciding what the defendant's state of mind was at the time of the alleged killing. The defendant's state of mind may be inferred from the kind of weapon used, the type of wounds inflicted, the acts and words of the defendant. And any other circumstances surrounding the alleged killing.

You may infer that the defendant intended to kill if he used a dangerous weapon in a way that was likely to cause death. Likewise, you may infer the defendant intended the usual results that follow from the use of a dangerous weapon. A gun is a dangerous weapon. A dangerous weapon is any instrument that is used in a way that is likely to cause serious physical injury or death.

And in count 3, the defendant is charged with the crime of Possessing a Firearm at the time he committed a Felony. To prove this charge the Prosecutor must prove each of the following elements beyond a reasonable doubt. First, that the defendant committed the crime of murder or manslaughter. Those crimes have been defined for you.

It is not necessary, however, that the defendant be convicted of those crimes. And second, that at the time the defendant committed the crime, he knowingly carried or possessed a firearm.

The defendant claims that he acted in lawful self-defense. A person has the right to use force or even take a life to defend himself under certain circumstances. If a person acts in lawful self-dense his actions are excused and he is not guilty of any crime.

You should consider all the evidence and use the following rules to decide whether the defendant acted in lawful self-defense. Remember to judge the defendant's

conduct according to how the circumstances appeared to him at the time he acted.

First, at the time he acted the defendant must have honestly and reasonably believed that he was in danger of being killed or seriously injured. If this belief was honest and reasonable, he could act immediately to defend himself even if it turned out later that he was wrong about how much danger he was in.

In deciding if the defendant's belief was honest and reasonable you should consider all the circumstances as they appeared to the defendant at that time. Second, a person may not kill or seriously injure another person just to protect himself against what seems like a threat of only minor injury.

The defendant must have been afraid of death or serious injury. When you decide if the defendant was afraid of one or more of these, you should consider all the circumstances. The condition of the people involved. Including their relative strength.

Whether the other person was armed with a dangerous weapon or had other means of injuring the defendant. The nature of the other person's attack or threat. And whether the defendant knew about any previous violent acts or threats made by the other person.

Third, at the time he acted the defendant must have honestly and reasonably believed that what he did was

immediately necessary. Under the law a person may only us as much force as he thinks necessary at the time to protect himself.

When you decide whether the amount of force used seemed to be necessary, you may consider whether the defendant knew about any other ways of protecting himself. But you may also consider how the excitement of the moment affected the choice the defendant made.

A person can use deadly force in self-defense only where it is necessary to do so. If the defendant could have safely treated but did not do so, you may consider that fact in deciding whether the defendant honestly and reasonably believed he needed to use deadly force in self-defense.

However, a person is ever required to retreat if attacked in his own home. Nor if the person reasonably believes that an attacker is about to use a deadly weapon. Nor if the person is subject to a sudden fierce and violent attack.

Further, a person is not required to retreat if the person has not or is not engaged in the commission of a crime at the time the deadly force is used. And has a legal right to be where the person is at that time. And has an honest and reasonable belief that the use of deadly force is necessary to prevent imminent death or great bodily harm of the person.

A person's porch is part of his home. The defendant

dose not have to prove that he acted in self-defense. Instead, the Prosecutor must prove beyond a reasonable doubt that the defendant did not act in self-defense.

Okay. Ladies and gentlemen, that is it for instructions for the day. You're not free to discuss the case with anyone. Don't watch, listen to or read any news reports about the case for the reasons I explained to your earlier.

I will see you tomorrow at 9:00 a.m., promptly. And we will start with closing arguments at that time. Thank you very much for your patience with me today.

DEPUTY REDINGER: All rise for the jury.

(At 3:18 p.m., jury excused/off the record)

(At 3:20 p.m., on the record)

THE COURT: Okay. Regarding closing arguments. I don't want, I'm thinking limiting each side to an hour; is sufficient. And then 10 or 15 minutes for rebuttal.

MS. CARPENTER: I'm sorry, your Honor. I was getting paper to right down this.

THE COURT: No, that's okay. It's very simple. One hour for closing arguments. I think that it can be summed up in that.

I feel like if I don't set some parameters we might be here till next week.

MS. CARPENTER: Me, your Honor. I promise. I don't like to go more than an hour anyways. It's to long.

things place or terminology?

JURY PANEL: (No response)

THE COURT: For the record I see no hands. And did any of you read or create any blogs, social networking pages, status updates or tweets about this case?

JURY PANEL: (No response)

THE COURT: Okay. For the record, I see no hands. Mr. Muscat please proceed. And for the record the weapon has been cleared. And it will not be pointed at any of the jurors. Go ahead Mr. Muscat.

(At 9:42 a.m., Closing Arguments by Mr. Muscat)

MR. MUSCAT: She just wanted to go home. She just wanted to go home. On November 2, 2013, Ms. McBride; injured, disoriented. Just wanted to go home.

Yet she ended up in the morgue. With bullets in her head and in her brain. Because the defendant picked up this shotgun, released this safety, raised it at her, pulled the trigger and blew her face off. He heard knocks and he was mad.

(Snip-it of video exhibit played for the jury)

MR. MUSCAT: He was angry. And he was full of piss and vinegar. And he was gonna find out what's going on. And he took that shotgun, while mad, angry and full of piss and vinegar to find out what's going on.

(Snip-it of video exhibit played for the jury)

Why? Why? Why? Because some kids paint balled his car a few weeks earlier. Because he was fed up with the knocking. Why? Why?

(Snip-it of video exhibit played for the jury)

MR. MUSCAT: He wanted a confrontation. He wanted the kids, the neighborhood kids to leave him alone. He wanted to show them a shotgun. Because he had had enough. Enough of the drug paraphernalia on his front yard.

Enough of the paint ball. Enough of the kids doing whatever to him. And he went and took a shotgun, in his words, to show it to 'em and scare them away.

(Snip-it of video exhibit played for the jury)

MR. MUSCAT: Now the sound's back at the front door. I've had enough. I'm going to find out what's going on. He goes to where the sound is with the shotgun. He wants a confrontation.

And what he finds is a 19 year old unarmed teenager. Wet, probably cold, scared, disoriented, possible closed head injury. And based on the evidence in this case and the reasonable inferences, looking for help. He raised up his gun at that person and shot her in the face.

He tells us that the banging was so loud that he had to crawl through his house to look for his cell phone. However, he never looked in the place where he keeps it the most. His front pocket.

After he killed Ms. McBride he found it instantly. But he tells us that the reason he had this confrontation is because he couldn't find his cell phone. You have heard evidence from many witnesses in this case, including the defendant.

And all you heard about, ladies and gentlemen, from the defendant's own words, was knocking and noises at those two doors. The front door for the record, and the side door. You heard no evidence from the defendant of any noises or anybody being in his backyard.

(Photo exhibits being shown to jury)

MR. MUSCAT: That's the backdoor. Those are the wiggly steps. And that's the air conditioner in the backyard of this fenced yard. He never said he heard anything coming from there.

He wanted to show the shotgun. He opened the door a bit. Then he opened it all the way. He saw a person. At that point he raised it up, he raised up the shotgun.

He may have even stopped and said something. Not sure what I said, because now I'm piss and mad. Not scared. Now I'm mad.

He raised the gun. And he shot and he killed Renisha McBride. And that's why we're here today.

The People's witness in this case will not ever be Renisha McBride. She's not here to tell you what happened

that night because of his actions. He shot her through a locked door.

(911 called played for the jury)

MR. MUSCAT: He found his phone right away. Called the police. But he never told them this person was trying to get into this house. Or trying to hurt him. Or trying to cause him great bodily harm. Any of that.

Peppers called him back. And he said it went off by accident. I didn't know it was loaded. When the police arrived they talked to him. And he first describes this, what happened here. A consistent knocking on the door.

I'm trying to look through the windows. Now, now we know that windows mean the peephole in a door. But that's what he tells the police. A consistent knocking on the door. And the gun discharged.

I opened the door, kinda like who is this. And the gun discharged. I didn't even know there was a round in there. There is no evidence of fear. No evidence that he was going to get hurt. No evidence that anyone was ever in his home; by his own words and by his own experts. He wanted the knocking to stop.

We know that on that night Ms. McBride had been out or with a friend drinking and smoking some marijuana. We know that at 12:55 p.m., approx--12:55 approximately she was driving down this street at approximately 36 miles an hour

when she crashed into a parked car.

Such a traumatic event that that car got pushed up onto a lawn. Her air bag deployed. She cracked her head on the windshield. And she got blood in parts of the vehicle. And you've seen the DNA experts that have told you that that's Ms. McBride's blood.

That happened at 12:55. She wondered around that area until 1:20.

(Audio of 911 called played for jury)

MR. MUSCAT: We know from that evidence that she was injured. Bleeding, disoriented, unsteady on her feet, drunk. Also had a possible closed head injury. And she wanted to go home. She wanted to go home.

And the last people that saw her alive from that scene saw her go in that direction. As indicated in the testimony. And if we go in that direction we are approximately five blocks away from the defendant's house.

Now what happened between 1:20 and 4:30 a.m., 4:40 a.m. People looked for her, but she wasn't found. Did she lay down and go to sleep? Who knows. With that type of injury and the type of condition that she was in, that very reasonably could have happened.

She got up and she was looking for help. And she found herself at the home of the defendant. And that's where she met her end. Because she knocked on some doors.

But one thing I want you to remember, there is only one person that has told us that there was any knocking or banging. The defense has no burden in this case. But they put Mr. Wafer forward. He is the only person that heard knocking or banging, if you believe him.

He's the only person that says there was knocking or banging. It has been referred to as if it's a fact. But if you don't believe Mr. Wafer's testimony for any reason, it's not. It's not a fact in evidence in this case that there was knocking or banging.

There is evidence that a screen may have been dislodged. Whether that was dislodged before this night, we don't know. Whether it was dislodged by that shotgun blast, we don't know. We don't know how many clips held that screen in. And there's a little mesh imprint against the door. We don't know when that was put there.

The only evidence in this case that there was a violent banging comes from the man on trial. And I would suggest to you that the testimony you heard from his today is not, or yesterday, is not worthy of belief based on the evidence in this case.

Let's look at the law. Mr. Wafer is charged with murder in the second degree. The People have to prove beyond a reasonable doubt. Now these are the elements that the People have to prove.

And before we get into those I will tell you that I will be doing the initial closing in this case. And my supervisor, Ms. Siringas, will be doing the rebuttal. We all know that Ms. Hagaman-Clark wishes that she could be here, but she's not.

Murder second degree. We have to prove these elements. Nothing more. Nothing less. Hold us to our burden. But just of the elements.

Defendant caused the death of Renisha McBride. There is no dispute in this case. That at the time he caused her death he had one of these three states of mind.

That he intended to kill or, and or he intended to commit great bodily harm. And or, he knowingly created a very high risk of death or great bodily harm. Knowing that death or great bodily harm would be the likely result.

Now I like to use a visual for this. Because I want to show you something when I tell you something about this element.

(Video display being shown to jury)

MR. MUSCAT: You see the boxes here? You see I have one box for the first part of this element. There is only one box here. You only have to decide that he had one of these three states of mind. You don't even have to agree which one.

Six of you could think that he intended to kill. Six of you could think he intended to commit great bodily

harm. Ten of you could think he intended, that he knowingly created a very high risk of death.

Two of you could think he intended to kill. If you all agree that it is one of these three states of mind then that box gets checked. And that element's been shown.

You have heard from several experts, police officers firearms examiners that talk about how dangerous that weapon is. Whether it's loaded or not, picking up a weapon that you don't clear first, that you don't know is loaded. Releasing the safety.

Whether it's to scare someone or to kill someone. Pointing it at another person creates a very high risk of death or great bodily harm. There is no other option. This is a deadly weapon. It's designed to kill. It's not designed to scare people away.

(Mr. Muscat racks the shotgun)

MR. MUSCAT: That scares people away. If you want to kill 'em just shot it. Or you pull the trigger.

So here's the unique thing about this charge as it applies to this case. Because you've heard Mr. Wafer say, it was an accident. You've heard Mr. Wafer say that he shot her. You've heard Mr. Wafer say, I didn't know the gun was loaded. I forgot about it.

You heard Mr. Wafer say, after I shot this person came into view. I believe you heard Mr. Wafer or his attorney

say, after the shot was fired the shell was ejected. Which isn't, didn't happen. Sergeant Gurka--

MS. CARPENTER: Yeah. Objection, your Honor. That's a mischaracterizing the evidence. I'm sorry.

(Ms. Carpenter rises to address the Court)

MS. CARPENTER: Neither myself or Mr. Wafer said how it was ever ejected. I believe it was the police officer.

THE COURT: Okay. Thank you.

MR. MUSCAT: Yes, I--

THE COURT: Hold on. Hold on. Hold on.

MR. MUSCAT: I'm sorry.

THE COURT: Ladies and gentlemen, what the attorney's say in closing, I've instructed you before, is not evidence. You only accept what they say that's supported by the evidence or your common sense and general knowledge. Go ahead.

MR. MUSCAT: And I agree. But I wasn't talking about what the officer testified to. I was talking about the one Mr. Wafer said yesterday. And there was a conversation about that topic.

He also said I drew. And he said it was a reaction to this figure. So you've got several different versions of how this shooting went down, from Mr. Wafer's own mouth and from the evidence in this case.

I would suggest to you that you don't have to pick a version. They all fit under this legal element. You could,

six of you could think that he went and he intended to kill here. I would suggest to you, that in order to claim self-defense that's what you have to do.

When you claim self-defense you have to get up there and say I killed somebody because they were gonna kill me. He won't even tell you that. He won't even give you that. He won't even, he still says that he thinks it's an accident.

Doesn't matter for purposes of this law. You can find him guilty for these crimes based on either version of that event. Based solely from the evidence in the scout car video. Based solely from the evidence in his interview to the police. Or based solely from his testimony in court.

Because he never established a legitimate self-defense. But he did establish these elements, ladies and gentlemen. And you don't have to pick, you'd have to say I knew he intended to kill. You don't have to say that he intended to commit great bodily harm. One of these three states of mind.

Taking a weapon that could have been loaded. Disengaging the safety or letting the your bag disengage the safety, I believe is what he said. Pointing it at a--

MS. CARPENTER: Objection, your Honor. That is another mischaracterization. He said he didn't, I just want the jury to--

THE COURT: No. That's fine. Your objection's

noted. Same rules apply. Go ahead Mr. Muscat.

MR. MUSCAT: And the jury heard the testimony where Mr. Wafer tried to use, tried to say that the safety accidently became disengaged when he pulled it out of his bag. He said that.

Ladies and gentlemen, when you take a weapon that could have been loaded and you point it in an area where you know there is a person or that a person--a place where anybody could be, and the gun goes off, and someone gets hit that's murder in the second degree.

If he had gone on to his porch, or excuse me. Gone to his door, pointed the weapon out the door and then pulled the trigger because his alarm clock went off or something and hit a person on the sidewalk, it would be the same charge. It would be the same charge. Because it's the same crime.

That is a dangerous weapon. And the way he handled it, he handled it like a toy. And as a result, a 19 year old is dead. This killing wasn't justified or excused on any other circumstances that reduce it.

Now the law--you were instructed on state of mind. Everything I just told you about that prong of murder in the second degree, plays into this instruction. When you think about the defendant's state of mind; you know, what he was intending when he was doing his actions. Look at these.

Look at, and this focuses on the weapon. Look at

the kind of weapon used. This isn't a 22 rifle. It's a short barreled shot, excuse me. It's a pump action shotgun.

Look at the type of wounds inflicted. You can look at the injuries on the victim to determine his intent. The acts and words of the defendant and any other circumstances.

You may infer that the defendant intended to kill simply by the fact that he used a dangerous weapon. That's it. Right there, that's what the law says. If he used a dangerous weapon then you can infer that he intended to kill.

A gun is a dangerous weapon. You can also infer that the defendant intended the usual results that follow from the use of a dangerous weapon. And that's what we just talked about.

That when you pick it up you have to treat if it's loaded. And if you don't, you can pull the trigger and you could hurt somebody.

Now ladies and gentlemen, when the People did their opening statement in this case, we didn't know that the defendant was gonna testify. Again, he doesn't have to. And he doesn't have a burden.

But he has testified. And he has admitted to you at times that he killed, that he intentionally killed this woman. So that's why I'm arguing to you know that you can consider both those theories. Even though Ms. Hagaman-Clark addressed if differently in her opening, because that's what we knew at

the time.

Mr. Wafer has got up her. He has sat in this chair. And he whoppled a little bit on this topic. But he said he raised that gun and pulled the trigger. He still tries to say it was a reaction to something.

He has given you the elements of that crime himself. He has admitted them. He has conceded them. A gun is a dangerous weapon.

Remember, infer that the defendant intended the usual results that follow the use of a dangerous weapon. And that takes us right back to here, ladies and gentlemen. These are the, this element addresses that. What are the intended results of when you waived a shotgun around.

So I grabbed it. And now I'm mad. Because I'm piss and vinegar now. I had enough of this. I had my hands on my weapon. I think I even said something. I should have called you guys first.

We wouldn't be here if he had called the police first. And the gun discharged. I didn't know there was a round in there. This is all evidence that you can use and apply it to those elements. Because that's what this case is about.

The fair application of the facts and evidence in this case, to the law. And the evidence isn't just physical exhibits. Sometimes people think that. Evidence includes

testimony. Evidence includes statements made on video. It's a whole bevy of items.

There was no damage to the steel doors and locks in this case. You heard at one point one of the officers referred to that house as being buttoned up. Buttoned up tight. Big glass block window in the back. Front door, front steel doors. Side steel doors.

There was no imminent threat of someone coming into that home. Certainly not a 19 year old 5'4" Renisha McBride. There was no damage to the steel doors. No damage to the locks on the doors as well.

The only possible damage is a screen door that's out of it's hinges a little bit. That's it. Which I believe, the defense will suggest to you that Ms. McBride did while banging her hands backwards. Because that's how people knock on doors. With their hands backwards.

Mr. Wafer pointed that gun at point blank range. Pulled the trigger. He pointed that gun at point blank range while he knew there was a person there. Because he told you that's when he raised the gun. And he fired.

He know, he says the safety was off. He doesn't say he put it off. He says it was off though. Maybe it came off when he pulled it out of the bag.

He opened the door two inches, then all the way. He saw a person. He raised his gun. He maybe said something.

And he shot and he killed her.

These are the elements of murder in the second degree. They have been shown in this case beyond a reasonable doubt. Hold us to these elements. But these elements have been shown. And the defendant is guilty of that crime.

You will also get to consider a lesser included offense on count 1. This lesser included offense is referred to as involuntary manslaughter. This is a different kind of manslaughter that we're gonna talk about in count 2. This is a lesser included offense to count 1.

And I'll just go through the basic elements. Again, defendant caused the death. Not a question. In doing so he acted in a gross and negligent manner. Did so without excuse or lawful justification.

The Judge has already read you these instructions. And she's also defined gross negligence to you. Defendant knew of a danger to another.

There is always a danger to another person if you point a gun that could be loaded, at them. He could have avoided injury by using ordinary care. Ordinary care is flipping the safety on and off.

I mean there's many different things he could have done. But that's just one example. He didn't use ordinary care. And as a result someone got hurt.

Now, on the verdict form for count 1, you will get

to choose one of those three options. I would suggest to you that the evidence has shown that he is guilty of murder in the second degree. So I would suggest to you to check that box.

You have the option, in lieu of that, of finding him guilty of involuntary manslaughter if you choose. That's on count 1. And that only applies to count 1. That is how your verdict form will look.

This is count 2. This is a different type of manslaughter. And you can tell it's different because of the elements. The elements are much different than the other count of manslaughter. Count 2, is separate from count 1.

You look at each count separately. Count 2, is separate from count 3. When you look at count 2, you have to look whether or not the People have proven these elements.

That the defendant cause the death. That the death resulted of a discharge of a firearm. No dispute. At the time it went off the defendant was pointing it at another person. No dispute.

At the time, the defendant intended to point the firearm at another person. No dispute. Mr. Wafer has not challenged any of these four elements for count 2. And he's guilty of count 2, as well.

And this is how your verdict form will look. Defendant also admit these same facts that I just argued to you for murder, also apply to count 2, obviously. That's why

I've repeated them.

And for your verdict form for count 2, it's a different kind of manslaughter. But you just have two options there. I would suggest to you, check this box guilty of manslaughter on count 2.

Felony firearm is a very straight forward crime. I'll show you the elements. He had in his possession a firearm, to wit a shotgun. And that he, at the time he committed or attempted to commit another crime he had it with him. I mean it's pretty simple. Felony firearm.

Ladies and gentlemen, the law gives you definitions. And gives you guidance on how to assess credibility of witnesses. And one of the main witnesses that you're gonna assess of the credibility of is Mr. Wafer.

I would suggest to you that his credibility is lacking. I would suggest to you that based on the evidence in this case, that from the very beginning, he has tried to manipulate a particular series of events. He's tried to paint a particular picture of what happened.

And that he tries to manipulate during the course of his 911 call, during the course of his squad car statement, and during the course of his interviewed statement with the police, and that he tried to manipulate when he testified in this courtroom.

How many times did you hear him after Ms. Siringas

had asked him a question and where he tried to add on facts. Just like Mr. Balash did, excuse me. Because they want to get something out, right.

Remember the buzz words conversation, yesterday. There are certain buzz words Mr. Wafer wanted to get out to you. So when you look at his credibility, these are some of the rules.

Now this isn't a who done it. So we don't have to necessarily look at some of these. But here's what I want you to look at.

In general, does the witness have any special reason to tell the truth or any special reason to lie. Does Mr. Wafer have any reason to lie in this case? How about trying to save his own skin.

All in all, how reasonable do you think the witness's testimony seems when you think about all the other evidence in the case. Look at his testimony from today or from yesterday and compare it to what he said in the statements. Compare it to the physical evidence. There's nothing that corroborates Mr. Wafer.

Now we look at false exculpatory statement. And a false exculpatory statement is when you say something deliberately because you think it's gonna get you out of trouble.

I come home. I find that all the cookies that I had

made for desert that evening are gone. I look to my dog. My dog can talk. I asked him did he eat the cookies. He said he was never home. I find out later he was home.

That statement that he was never home, it's a false exculpatory statement. My dog thinks, hey, if I wasn't home I couldn't a done it. The law says that a statement made by the defendant--determine whether the evidence has shown the statement to be false.

You can do that. You can look at the statements that he made. And a statement is his testimony as well. It's not a previous, just a previous event. It's his testimony as well.

If you determine that any of these statements were false, any of these statements were false. And they're related to the elements of the crime, you can use it as evidence of guilt. Proof of a false exculpatory statement may then be used by you to determine the guilt or innocense of the defendant to the charged offense.

So the fact that he lies and says the gun went off by accident is evidence of guilt. False exculpatory statement equals evidence of guilt. Telling the police multiple times that the weapon discharged by accident is evidence of guilt.

Now we talk about self-defense. And I'll, the Judge has read it to you. I just want to focus on some key points. It has to be honest and reasonable.

The defendant must have acted honestly, or must have honestly and reasonably believed he was in danger of being killed. That's the first time it says honestly and reasonably. Then it says it again. The defendant has to have and honest and reasonable belief.

And then again. A honest and reasonable belief. He may not, he cannot kill or seriously injury just to protect himself against what seems like a minor injury. He has to have a imminent fear of impending death or great bodily harm.

You can't claim self-defense simply as a reaction to movement on your porch. You cannot gun down a person, you can't gun down a person in your house for doing that. You have to, at the time that you shoot and kill that person, you have to have had an honest and reasonable belief that imminent death or great bodily harm was coming to you.

No matter where it happens. The home doesn't provide you any extra benefit. He must have been afraid of death or serious--

MS. CARPENTER: Objection, your Honor. That was a misstatement on the law. The home is, the Castle Doctrine. It allows actually more protection for self-defense.

MR. MUSCAT: No. See now, Judge.

THE COURT: Okay. Hold on.

MR. MUSCAT: What is this?

THE COURT: I've already instructed you on the law.

And I also said, that if a lawyer says something different about the law follow what I say. You can continue Mr. Muscat.

MR. MUSCAT: And what she told you was is that you don't have to treat in your house. That's it. That's not what I'm talking about. I'm not talking about retreating.

Regardless of where you are at the time, at the time you use deadly force, you have to honestly and reasonably believe that you were facing death or great bodily harm. It had to be imminent. Yes, you don't have duty to retreat in your house, but that's not what I was talking about.

The law, again, tells you to consider all the circumstances. He shot through a locked door. He shot a woman that was just standing on this porch. The law tells you, when you decide whether or not the defendant; when you look at the defendant's claim, the condition of the people involved.

Ms. McBride: disoriented, injured, stumbling around. Who knows how she did that to her boot. Falling down, getting up while she was stumbling around. With a likely closed head injury.

And then we have the defendant. Mad. Full of piss and vinegar. And he's had enough. Compare those two.

'Cause that's what the law is telling you to do. Look at the condition of the people involved in the shooting. Look how they differ. Look at their relative strength and or

lack there of. This is the strength of the defendant. A pump shotgun.

This is Ms. McBride. Five foot four. Nineteen years old. Unarmed. Injured. Disoriented. Unsteady on her feet. And some may other things, you've already heard the witnesses testify to.

Again, now the instruction says, was the victim armed. Was the other person. That means the victim. The decedent. There's no evidence that the victim was armed in this case. There has never been any evidence.

The defendant said he never saw a weapon. No evidence was ever recovered. There's no evidence that she was armed. And she wasn't. She was not.

She was a young girl looking for help. What he did had to be immediately necessary. Immediately necessary. And it wasn't. It wasn't. He had many other options.

There has been no testimony that anybody was entering his home, coming into his home. I still don't know how they would've got through that steel door. But what he did was not immediately necessary. It was reckless. It was negligent.

I don't know how to describe it. It's horrific what he did. Because in his words, someone was knocking and banging on his doors. You can consider, the law says, hey look were there other ways he could have protected himself.

How about shutting the door. How about keeping it shut. How about calling 911. How about going into a different part of your house. That's not retreating. But going to a different part of your house.

No. What he does is he engages. He creates the confrontation. And his actions escalated this situation to where now he's in his door. And there's someone on his porch, maybe, and he shoots her.

And I say maybe, just because you don't know exactly where she was when she was shot. I would suggest to you that the defendant's firearms expert in this case is not credible. I would suggest to you that she could be anywhere from 2, 3, 4 feet away, based on the evidence in this case. Or farther.

But the difference of 1 foot doesn't make it okay for you to kill somebody. It seems very focused that 2 feet was the magic number for the defense in this case. Doesn't matter. He was inside on the other side of a steel locked door.

But before he even got to that steel locked door he had other options. He has so many other options. We're to believe that he couldn't find his cell phone. And those again, are those steel doors that he had with the deadbolts.

Again, the law is telling you was it necessary. Do you see in the theme here. The law only excuses the taking of another person's life, in the most extreme situations. In the

most extreme. They have not been met in this case, by far.

It was not necessary for him to do that. Even if you believe, even if you believe his version of how the final events went down. That he is at the door. That a figure comes from his left. And he shoots.

Even then, at that point, where is there an honest and reasonable belief of imminent death or great bodily harm simply because there's a person on your porch. Where is it. It's not here. He hasn't shown it.

He doesn't have a burden. But it hasn't been shown. And here's where it really get's interesting. Because he tells you, after I shot I recall it was loaded.

Remember when he said that yesterday. After I shot I recall it was loaded. So he's going back to the accident, right?

If he is going to scare someone away, whether it's the kids that paint balled his car. Someone banging on his door, whatever. And he picks up a loa--what he thought, he told you and unloaded shotgun. That's not self-defense then.

The self-defense ends right there. You can't say I picked up a loaded shotgun because some people were annoying me. Then it went off. And that's self-defense. It's just so happened it turned out being loaded.

And so, yeah okay it's self-defense now. No. He told you it was an accident. He testified on the stand that

he thought the gun was unloaded. If you go and pick up an unloaded weapon, no more self-defense. Unless you beat the person to death with the unloaded weapon.

That's what shows you what he was thinking in his mind at that time. 'Cause he's telling you he thought it was an unloaded weapon. Yeah, he wanted to scare the kids away. Not 'cause he was scared. 'Cause he was mad at the kids that paint balled his car or whatever.

There's no evidence there was more than one person out there that night. None. No credible evidence of that.

So I grabbed it. And now I'm mad. Again, we talk about honest and reasonable belief to prevent imminent death or great bodily harm.

Lets talk about honest. I just went through the instructions for you on witness credibility and false exculpatory statement. In order for you to believe the defendant had an honest reasonable belief, you have to make a determination that his testimony was honest. And it wasn't.

First three times he described this murder he says it was an accident. And he admits he was deliberately denying that he shot her. He's leaves out crucial facts. He flip flops back and forth.

I shot her in fear on purpose. That's what he said at one point. After I shot I recall it was loaded. Again, how can this be an honest and reasonable fear, when we can't

get past the honest part.

He shows no remorse during that interview with the police. And he says the safety was off inadvertently. Is it loaded. Isn't it loaded. Is it loaded. It's it loaded. He goes back and forth.

Which is it? How can there be an honest and reasonable belief if we can't get past honest. Now let's go to reasonable. He shot through a locked door.

He shot an unarmed teenager. He had other options. He killed an unarmed, injured, disoriented 19 year old teenager. Leaves the gun on the ground and steel security door open.

Again, if he was really in fear for his life. And he said that there, he's tried to suggest there was more than one person that evening. Who does that? Who leaves your only item of defense on the ground? And then who leaves your door wide open?

Because he didn't go out there to defend himself. He never went out there to defend himself. He went out there to have a confrontation with some people that were annoying him. Or with a person that was annoying him.

No one else hears this banging. When you talk about reasonable, let's focus on this. Do we remember how that was described in opening statements. Boom boom boom. Boom boom boom. Boom boom boom.

And then Mr. Wafer said it was louder than that. What about Mr. Murad. Do you remember Ray Murad. The man who was awake. The man who could hear.

Because he had heard 15 minutes earlier. Fifteen minutes before the shooting. He heard, while he was in his house right across the street, trees scratching against his car. All he hears is gunshots. And he's awake this whole time.

So is it reasonable for us to believe that there was even banging? There's no evidence that supports that. It's directly to the contrary.

(Snip-it of video exhibit played for the jury)

MR. MUSCAT: That's how he describes how she died. He grabbed his gun and he's mad. He's full of piss and vinegar. And he grabbed it because I'm piss and vinegar now.

I've had enough of this. I had my hands on my weapon. I think I even say everything. All the evidence in this case points in one direction. And that's to the defendant.

It all points to the defendant. Because he is guilty of murder in the second degree. He is guilty of count 2, manslaughter. And he is guilty of felony firearm. For taking the life of a young girl that just wanted to go home. She just wanted to go him.

Justice is the fair application of the law to the

facts. And that facts to the law. Look at the facts. Look at the elements. Look at the credible evidence in this case and render a just verdict. Justice for Renisha McBride.

Mr. Wafer's actions were unnecessary, unjustified and unreasonable. Thank you.

THE COURT: Thank you. Go ahead Ms. Carpenter.

MS. CARPENTER: Thank you.

(At 10:30 a.m., Closing Arguments by Ms. Carpenter)

MS. CARPENTER: Good morning, everybody.

JURY PANEL: Good morning.

MS. CARPENTER: Does this man, Ted Wafer, look like somebody who was out of his mind with anger that night when you watched it? Does he look like a man who's confused after the fact? And a man that you heard, was in fear for his life.

And it was coming at him. They were coming at him. How many times did he say that. And ladies and gentlemen, Ted was up there for two hours getting cross-examined.

Two hours. One hour with me on direct. Two hours with Ms. Siringas. He as honest. He was honest. And I want to talk about that a little bit more.

The law of self-defense is so simple, so easy. And it's not complicated at all. At all. Two questions for you. And that's it in this case. Two questions. That's all you have to break down.

One, and you have to decide amongst yourselves, was Ted in fear of his life or great bodily harm that night? And two, was that danger imminent? Did he feel like that danger was imminent? Yes and yes.

And Mr. Muscat just put on this good power point about the elements of murder 2. Not one manslaughter, another manslaughter and another felony firearm. I agree with everything he said up there. I completely agree.

Actually, you don't even need to go back there and talk about that. You don't even need to discuss those because; let me show you the law that Mr. Muscat really didn't go over with you. And that's what this whole case is about.

You're gonna have this. This is exactly how it's gonna look. It's jury instruction 7.15. Use of deadly force in self-defense. Now we saw snip-it's of that when Mr. Muscat was doing this. But this is what matters.

Because did you see the elements, the murder 1, the manslaughter all of that. Look at the last line where Mr. Muscat just kinda passed through.

MR. MUSCAT: Objection, your Honor. The Court has already instructed the jury on this whole instruction. I didn't pass through anything.

THE COURT: Okay. Go ahead.

MS. CARPENTER: Thank you. I'm used to that by now. Ha ha ha, I get a lot of objections. But I'll move on.

THE COURT: Let's just, yes.

MS. CARPENTER: I'll move on.

THE COURT: Go ahead Ms. Carpenter.

MS. CARPENTER: That's my own issue. I'll let it go. He did pass through this. Did you see him really show you this whole thing and linger on the last line of every offense?

No, you didn't. Because that last line of every offense, and why does it matter what those elements are? Really don't spend the time on those. Because the last line of every charged offense against Ted ends with unless it was justified. Unless it was justified.

So that's all we need to look at. And it's really simple. Don't let all that, you just look at this one. 'Cause I don't care. Even if, I mean, I could say yeah all those elements are true.

All of them are true. Who cares? Because the law, the law of self-defense is the ultimate protection for every single one of us. For me, for you and all of you.

It is like a big umbrella that protects us. Big huge umbrella. And this is what we need to concentrate on. And this is simple. Like is a said, this law, it has a lot of words.

But really the two questions are, was Ted in fear for his life or great bodily harm. Doesn't has to think he's about to get killed. It could be enough just to think he's

about to get really seriously injured.

And then 2, was it imminent? Was it about to happen? Was it immediate? All those words are interchangeable.

And Mr. Muscat came over here and tried to pretend he was Ted. I've been with Ted for nine months now. This man told the truth yesterday. He was honest and reasonable.

And can you imagine if you were sitting in here. What it's like, every single word I've every said in my life is being scrutinized. Yeah, I said the word accident. I didn't know how to explain it.

When it happened to me I didn't know what was going on. But I'm not claiming it was an accident. Why do they keep picking out one word? Why do they keep saying accident and putting it on the screen? I didn't just say accident.

Look at my interview. Pleas look at my whole interview. Did it sound like I was trying to say this was an accident? No, I wasn't. I did this in self-defense.

I thought they, they were coming in any moment. And this wasn't my first resort. This wasn't my first option. I swear. I tried to look for my phone, I crawled, I hid, I turned. I played dead.

And then I went and got my baseball bat. And why don't they show you this? Why don't they show you this? The evidence which shows this is exactly what I did that night.

It's in evidence. Look where my baseball bat is?

It's right where I dropped it when I realized that wasn't enough. Exhibit 50. When you go back there write that down. Look at the baseball bat back there. And then he got is shotgun.

It was getting louder and louder and louder and louder, until the floors started vibrating. The walls were shaking. The window was about the break. The screen door as already broken.

And I couldn't believe that they stood up in opening statement. And I know Ms. Hagaman-Clark's not here. And she's not doing closing. But remember when they stood up in front of you and said there is no evidence that anything was broken.

No evidence that Renisha McBride broke that screen door. I couldn't believe they said that to you. And now I guess, in closing, Mr. Muscat is telling you; well maybe actually Ms. McBride did break that screen door.

Well, maybe we were wrong. And our only witness who showed anything, to prove anything, was Sergeant Kolonich. The Michigan State Firearms expert.

Remember when, that was one line. And all you got. They have the burden. Do not forget that. Just because we found a lot of the evidence, and we had a lot of witnesses, the burden is never on us.

It always stays on them. And they have a burden to disprove, disprove self-defense. We raised it. They have that burden. I like to think of it, like when you think of the term burden what does that mean?

It's like you got a boulder on you. It is heavy. It is a big burden. And that will always stay here, 'cause they've never, never ever showed anything. Remember they told you in opening, that screen door. This screen door.

(Screen door brought before jury by Ms. Carpenter)

MS. CARPENTER: I have not carried a frame this many times in my life, ever. Remember, they told you. Shotgun blast. Put that screen and made it go out, right. Remember when they told you that in opening.

And what evidence, think back, all of you think about and look through your notes. What evidence did they give you that the shotgun blast caused that? None. Zero.

They only had Kolonich saying, I guess it's possible for the force of a shotgun blast to make a screen go through the door. That's it. Possible. Maybe.

But use your common sense. But I gave you David Balash, Michigan State Police Officer who has been retired. And the Prosecutor calls him as expert. So I don't know why, I guess Mr. Muscat 'll never call him again for his services. He doesn't think he's reliable and a good expert.

That man is untarnished. I can't believe they said

he was not credible. But that's for you to determine.

But look, just common sense. You know how screens are inserted in doors. With the little clasps that we saw that nobody ever cared about except us. And we'll get to those.

But they're back here. What's here? Look what's all the way around here. Took me a couple months to figure this out. A lip. A lip.

Shotgun blast will not make it go through the lip. Never, never never. And that physics, for those of you that know physics. The energy goes through those screen holes. It goes through it.

And heard Mr. Balash say that the closer you are the less force there is to the screen. So if you go farther back, maybe. Maybe. And he didn't lie to you. Maybe if you're this far back. But we know it was contact.

The muzzle was on the screen. That's how close the threat was. The threat was not more than 2 feet away. Coming, lunging from the side. We were, notice, and they said how do we know that happened?

Look at the evidence. The only evidence--they collected some evidence. Her feet were right there. And she was coming from the side. We can't dispute that. She was coming from the side at Mr. Wafer.

Can any of you imagine after, and there's no dispute

about this. It's either between one and three minutes Mr. Wafer was terrorized in his home. Terror. I mean, I don't know if any of you, I have.

If any of you have gone home since this case has started. I've done it. And got up at 4:30 in the morning or some time in the middle of the night. When you're all alone in your house.

And there was a point when I was all alone in my house about a week ago. And my dog and that's it. And I was up in the middle of the night. And everything was dark. And I thought at that moment what Ted must have felt like that night. I didn't dawn on me.

'Cause everything changes at night. Everything changes. When you're sleeping soundly. You've worked a hard day. You had a few beers at the pub. You watch some sports. And you go to sleep.

And you're gonna go kayaking or see your see your family the next day. That's what Mr. Wafer was doing. At 4:30 in the morning. Can we have that. The compare and contrast please.

(Exhibit shown to jury via projector)

MS. CARPENTER: 'Cause I think this is important. And think about how it is when you're woken up from a deep sleep. The man had been sleeping since about 10:00 p.m., that night.

Woke up one time to go to the bathroom. Change his pants. That's cell phone went. Don't you wish he would've plugged that in that night.

Let's see what was going on to make it reasonable and honest. He was in pure terror. Let's start at, a good time. Was it nine o'clock. Sorry, eight o'clock.

Let's look what Renisha and Ted were doing. And before we put it up. Wait a second Samantha. I want to let you know this case is, and I'm not putting up there because case is not about Renisha. Despite what the Prosecutor's think.

Remember, not this Monday but the Monday before it. Where we spent all day in here about car crash witnesses. Oh my gosh. We heard and accident reconstructionist. And everybody agrees, she got in a bad car accident.

She hit her head. She wasn't wearing a seatbelt. I don't know why they spent a day. We all agree at that moment, at one, she was disoriented and confused. That doesn't mean that she was like that at 4:30 in the morning.

I bet you all have been around drunk people. I think everybody in their life have been around drunk people at one point or another. And they change. Especially when they're coming down.

And that's what she was doing. Coming down. It was a .3 and she was coming down to a .21. And with head

injuries, those of you who have medical experience, you change.

You can be one way one second, another way another second. You never know when that's gonna happen. And remember Dr. Spitz up here telling you. This man knows what he's talking about.

He told you, no the people at the car crash aren't the best people to tell you how Renisha was that night. Who is it? It's Mr. Wafer who encountered her at 4:30 in the morning.

Let's see what was happening. I don't want you to forget this. I'm not blaming Renisha. But alcohol is what caused all of this. Eight p.m., Renisha. That's the time she is drinking and smoking marijuana with her best friend Amber Jenkins.

And what's really important is how Amber described Renisha that night. It was the first time since 8th grade that she ever got kind of mad. She was losing that drinking game. Eleven shots probably, she had.

She was 11 times the legal limit for her age. And Amber left because she didn't want it to escalate. That's the first time in her life she ever had to do that. That's very important.

And what was Ted doing at eight. He had just gotten home. Eating a sandwich. Gettin' ready for bed.

What's the next time. Nine thirty. That's when Amber Jenkins leaves after the argument. Ted is in his recliner at that time going to sleep.

Ten forty-five. That's when mom gets home at Renisha's house. And Renisha sneaks out. She wasn't suppose to leave. She snuck out. Mom didn't know it. Asleep. Ted it.

Next time. Eleven p.m. Oh, she leaves the house about that time. And this is about this time, 11 to 1:00 a.m., and Ted goes to the bathroom. Oh, he's still sleep. But you know he wakes up and goes to the bathroom at that time.

And then 1:00 a.m., the car crash. We heard enough about that. I'm not going into anything more about the car crash. Ted was still asleep.

And then that's fine. And we know what happens, and you can take that off. Thank you Samantha. From 1:00 a.m. to 4:30 a.m., we have no idea what Renisha was doing. We could have. We could've.

And why is that important? Because what she was doing. And how her actions affected Ted. That's the only reason these are important. How her actions affected him.

Remember Amber Jenkins telling us, Renisha went to the stop. I asked her what's the spot? It's a dope house. Oh, where is that dope house? Objection.

She knew where it was. She knew where it was. What happen if that was in Ted's neighborhood. That's why I was asking. And who could have found this out? Detective Sergeant Gurka.

Any of those police officers we saw could have found that out. We had--nobody listened to the voice mails. There was voice mail left on Renisha's phone. Wouldn't those be important to find out what was going on.

What did we hear all throughout this trial by law enforcement. I wasn't asked that. It's not my job. I didn't do that. Nobody asked me to do that test. We don't know. It's just passing the buck.

And when somebody's life is on the line, somebody's on trial for murder. You've got to do your job. And you heard Ted. He likes the police actually.

He didn't like it when copper canyon left his neighborhood. He likes the extra surveillance. He's a rule follower.

You hear him in that interview. I had this parking ticket. And I was in my driveway. And I didn't, I was guilty. I didn't fight it.

And the cops even telling him, you coulda fought. And he was like, no I did it. He's a rule follower. And he followed the rules because, that night he didn't do anything wrong. He is protected by the law of self-defense. Clear and

simple.

And you know what? Why, when the Prosecutor got up here in opening statement and said there's no evidence of breaking. I just wanted to scream. 'Cause I knew at that point you guys didn't know.

We would've had a lot more if they had done their jobs. If Dr. Kasha had done his job. If everybody worked as a team and didn't go to a scene and go, it's a open shut case. I guess I'm judge, jury and executioner.

I don't think anything's important. I go there. I a hour and a half after it happened. I don't know what I'm doing. I take that long to get to the scene.

And during that hour and a half it's just kinda crazy there. Nobody's in charge. People were wondering around.

We got Krot steppin' in it. And what was that about. And it's on the lawn now. So when Detective Sergeant Gurka said the scene was the porch, well he shoulda talked to another one of his colleagues to say, oh there was actually something over here in the lawn. It's just so madding.

They don't do their job. And because of that they argue to you there's no evidence of a break-in. Those clips, come on now. Do you really, Sergeant Parrinello and Detective Sergeant Gurka, denied my father handed those to 'em. Oh, I don't know what those are.

Those were found. My father found three. Ted found the other three. And those were the clips that held it. And they didn't care. They turned a blind eye. And you can't do that. You can't do that in any case.

I'm coming up the elevator this morning, coming up. And there's cops, Detroit cops there. And they were talking about there was another shootin' last night. Somebody got shot in the back of the head. And somebody had to jump out of a window.

We got crime everywhere. We live in Detroit. We're in Wayne County. We know what it's like. I was born in Detroit. My father lived there almost his whole life. I lived there for a while. I lived in Wayne County for almost my entire life.

And so does Ted. And so do all of you. You live in this fear. And it's horrible. And it's not a race issue.

And I'm gonna say that word. Because nobody's mentioned it. It isn't. Ted didn't know who this was. He didn't know if it was a white person, African American or who.

And I think to see if, 'cause it's been talked about before this trial. Is there a racist trial. He's a racist. This man is the farthest thing you can get from a racist. Did you hear him on the interview.

How did he describe his neighborhood? He likes his neighborhood. And he likes how it is. He doesn't like the

crime. And that's what changed. But he's not blaming particular people on that. It's, that's society.

And he says, we have Hispanics, we have Arabic people. We have African Americans. And those were his words.

And I think, in growing up in this area I know when you look at how somebody describes people of the opposite race; and the terms you use tell a lot about that person. And Ted used the term African American. He likes his neighborhood. And he hates how the crime is effecting them.

I mean, his neighbor, six weeks before that he has to load his gun because these drugies are in a car. And they come back to confront his neighbor. He's getting paint balled, I know that.

But when you add all of that together you hear; who has heard the Detroit Chief of Police to tell every Detroiter to go arm yourself. We know we have people who live in Detroit and who are armed. I think there's five or six of you who live in Detroit, on this jury.

And that's your legal, lawful right. And you have Detroit Police Chiefs telling you all to go do that. And if you just hear recently, they think the crime in Detroit's lowering because people arming themselves.

As the law allows. As what Ted was doing that night. He armed himself. He was getting attacked. Attacked. Put yourself in his shoes. At 4:30 in the morning in a house

alone. Let's see what it feels like. Can you put up that diagram.

(Exhibit being shown to jury via projector)

MS. CARPENTER: And think of all these factors that affected Ted that night. You'll see a picture of his home coming up. And you're gonna see everything that affected him when he was in that home. And I can just even do it without the diagram cause I know this.

Let's see what happens. I'll just go on. We're not gonna wait for that. That's okay, Samantha. But just imagine.

MS. SAMANTHA: It's on.

MS. CARPENTER: It's on. Okay. This is so important. 'Cause this is what you have to focus on when you're back there in the jury deliberation room. That's where you're gonna go and decide this case.

We've got Ted in his home. What happens to him? First thing. Can we turn the lights off please.

(Courtroom lights are turned down)

MS. CARPENTER: We got Ted in his house. Remember all these things when you're back there. He hears violent pounding. Is that disputed? One time he said knocking. But he testified it escalated. It got worse and worse. It was like a sound he's never felt before.

The next thing that impacted him. He believes,

honestly and reasonably, there are more than one person out there. He's getting from the side door, the front door. The side door and the front door to the side door.

That last one at the side door he goes to the front door. He doesn't go to the threat. You hear him. I want it to go away. I want it to go away. That impacts his fear.

And it is not the front and the side door. What would be so much different ladies and gentlemen, if this was somebody just pounding on one door. Just one. And it wasn't.

We heard, the side door was also attacked. We have smudge marks, remember that. The writer's palm. We don't know if it was Renisha's. But we know she was over there. Or somebody else.

Startled from sleep, I already talked about that. Put it in your mind set, not right now. Like we're in the light of day and we've all had time to process. This man is acting and reacting from getting awoken at 4:30 in the morning.

He's all alone in his house. Nobody to help him. And you heard him say that I have a 11 hundred square foot house. There is no where in my house I can stand where I can train my gun on both doors. His back will always be exposed.

Are you gonna sit in your house and wait. And I know some of us might--it's reasonable. He doesn't have backup and he thinks they're about to come in.

Crime in neighborhood. I went over that a lot. That affects you. If you're living out in the country, out somewhere and not in the Detroit area. He lives in the triangle. He lives where Dearborn Heights intersect with Detroit and Redford.

And we heard so much about Warren Avenue in this case. We heard about the detective having to rule out this was a prostitute thing. That was ruled out. But we'd they bring it up?

Oh, those prostitutes on Warren. Those drugs. Warren is not a safe area. And Ted lives .4 miles from it.

His screen door is broken. And Renisha did it. That was clear. We heard an expert witness explain how it happened. I won't go over that anymore.

Okay. The peephole broken. I said in opening it was shattered. And I know there has been the police officers who say I didn't see anything. And Mr. Balash couldn't remember looking at it.

But what it was and what Ted saw the first time he looked through that peephole, he could see that shadow is bigger coming off the side of the porch. When he looked at it the second time--have you ever seen a peephole shattered where it has one little and crack in the middle.

So you can still see through it but it's like you're double vision. That's what happened to his peephole. And

the officers, you know like, they say that. It's just another thing they missed.

This is one of the scariest in my opinion. All you here is metal on metal, pounding, pounding, pounding. But you're listening to a voice to say help me, help me. And it never comes.

How terrified would you be with all of this happening to you at 4:30 in the morning. It's reasonable and honest to be in fear for your life.

All right. One, two, three, four, five, six, seven, eight, nine, 10 things. Reasonable and honest for Ted to be in fear for his life that night. You can turn up the light. Thank you.

(Courtroom lights are turned back on)

MS. CARPENTER: I got another half hour. And I want to use it. And I hope I'm not boring anybody. But there's so many important things.

The burden of proof. That's the next one that I want to show you. 'Cause this is so important. And really, you didn't see this by the Prosecutor's, did you?

There's a couple things that are so important that are so important for all of you to look at back there. Seven point two zero. You'll get these in the little red binders. Look at this one.

The defendant does not have to prove he acted in

self-defense. Instead, the Prosecutor must prove beyond a reasonable doubt, that the defendant did not act in self-defense. I think that was a little confusing when I read that.

But what it says in plan language. They have that burden. We raise self-defense. They have to prove it didn't happen. They have to prove it didn't happen.

And how did they prove it wasn't self-defense? How did they-- really can't tell you how they proved it. Because all I heard is them cross-examining Ted. And Ted stayed honest and truthful when he was up there.

And then I heard, it was my dad. He told me last week. He goes, they're trying to prove this case with a bunch of photographs. I'm like you are so right dad. You're so right.

All you've got was 250 photos of a car crash. And evidence and all this. How did that disprove self-defense. How did any of their witnesses disprove self-defense?

Their witnesses didn't do anything really. Except the Michigan State Police Officer I called to ask to do the tests. That woven pattern on the door. We got that.

But what did they do? Nothing. We have two medical examiners in this case. We have the Wayne County, Dr. Kasha. And we have Dr. Spitz.

And then we have two gun experts. We have Sergeant

Kolonich from the Michigan State Police. And then we have David Balash. Retired Michigan State Police.

And what did their experts do? Zero. Zero zero. Did they do any testing on targets? No. Did they, except they just mock us that we didn't do screen testing. And told us we couldn't.

Why didn't we do any of this and bring this proof to you. They didn't bring anything to you. I mean, seriously, nothing. There burden is this high. And they're about right here.

(Ms. Carpenter extend arms over her hand then lower)

MS. CARPENTER: There's no way they can disprove this was self-defense. None. And right there, ladies and gentlemen, is when you have to check this verdict form. And I wrote all over it. Where'd that go. Over here. Sorry.

You're gonna get this verdict form.

THE COURT: Hold on. Let me see what you wrote on it.

MS. CARPENTER: Oh, I, it's not, well. Do we have a clean one?

MR. MUSCAT: Yep.

MR. CARPENTER: I write all over things. And I want to, I just want make sure you understand it. 'Cause it's a bit confusing in my opinion, because there's the two manslaughters on here and everything.

Here's the verdict form you will get back that there. And of course, of course you know what I'm asking you all to do. The first box in every single one of them.

It doesn't say not guilty because of self-defense, but that's what it means. So check not guilty for murder. Check not guilty for manslaughter. And check not guilty for felony firearm.

Because do you remember, I think she was over there where you're sitting. That one juror who the Prosecutor kicked off. Who said, remember, I was on a jury trial once. And I got so frustrated because they were saying guilty but, but there was a but. But but. And nobody would listen to her.

The case of self-defense is kind of, it is a justifiable act. Doesn't matter if he did everything. He's not guilty because they did not disprove self-defense.

So it's the first not guilty, not guilty, not guilty. That means you think it's in lawful self-defense. Or they didn't prove the elements. But I, I, I submit to you that don't really matter.

And what this means, count 1, it's murder 2 degree. And there's another count under this murder second of involuntary manslaughter. And what count 2, is is manslaughter.

But what that one is, is firearm intentionally

pointed and it caused death. That's the difference between these two. And felony firearm just goes along with any felony.

But the law of self-defense is an ultimate, absolute protection to all of these. And it must be not guilty on all three counts. It's that simple.

And I want to answer, I have some time left. And I know this case has some big questions. I never had such questions in a case that were hard to answer at first. Real real hard. But I think we've gotten answers throughout this trial.

All right. First one, why bring an unloaded shotgun to the door? Why? Doesn't make sense, right? It does.

'Cause I just have to go back to yesterday when Ms. Siringas swept you all with the muzzle of that gun. And how many of you jumped in terror. And were horrified. Because that gun is scary. That gun is menacing.

You heard Mr. Muscat rack that thing 20 times when he was cross-examining my expert. It's a scary gun. So it is definitely reasonable Ted's gonna bring this scary gun to the door and try to make is go away. That's all he wanted.

He's not a gun nut. He's not an angry person and he's not paranoid. He's a man who was in terror. And that's why he brought an unloaded gun to the door.

And it doesn't matter that he didn't remember it was

loaded. There's no argument that somebody came in and loaded that gun. Oh my God, I didn't do it. He did it.

In the heat of that moment. And in that two to three minutes of terrors he forgot. Because that habit had been for almost six years to keep it unloaded.

How many times have we all forgotten we did something when our habit been so long of doing things one way. And then the fear overtakes you. Remember Dr. Spitz, and how it highjacks the body. Fear is in all of us.

You didn't think about reacting yesterday, did you, when the gun was pointed at you. You just reacted. Because that's what's built into all of us so we survive. We survive.

And the law of self-defense is very important. Because it says, and that's why I highlighted this part, if you want to write subsection 3. And you can all talk it about back there.

If the defendant's belief was honest and reasonable he could act immediately to defend himself, even if it turned out later he was wrong about how much danger he was in. You know what that means. You can't Monday morning quarterback.

Because in the heat of the moment, when our instincts are to survive, and it's honest and reasonable, you can't use this law if you just want to go and kill somebody and then say, oh self-defense. You can't.

You have to really honestly and reasonably show.

And that have to disprove. They have to disprove. You don't have to show anything. They have to disprove it wasn't honest and reasonable.

I think anyone of us would feel terror. In terror he did not know it was a 19 year old who got in a car crash at 1:00 a.m. He didn't know that. What he knew is somebody's trying to get in. And it's not for a good reason. It's to hurt me.

And so even at that moment when you act in self-defense, it turns out later maybe she wasn't armed. Maybe, if she thought she was going to her mom's house. Maybe she was running from somebody. Maybe there is many many reasons she was at Ted's house breaking down that door.

But it doesn't matter what the reason is. All it matters is how Ted felt. How Ted felt, in that moment when this is happening to him. How he felt.

So even if he's mistaken, he's still not guilty. And you know, I want to tell you that I hate guns. Hate, hate guns. This case was the first case I've ever shot a gun. 'Cause I needed to know what it felt like to shoot a shotgun. But I hate 'em. I hate 'em.

But you know what I like, the law. That's why I'm a lawyer. And the law says what Ted did was reasonable, honest. And he's not guilty.

So despite our individual beliefs on gun control we

have to leave 'em out here as I did when I took this case. And we have to do it based on the law. And if you want the law changed, that 2006 Self-defense Act that was inactive for all of us in the State of Michigan, you go change it in Lansing.

But when we have the law how it is today in Michigan, it says that Ted is not guilty. Despite your views on gun control.

Another question you might have, how do you forget it's loaded? I already talked about that. Why did you say it was an accident you flip flopper. I know Ms. Siringas I'll get up here. This is another example why they have the burden.

I can't talk anymore. I got probably about 15 minutes left. And after that I'm done. Done talking ever. She's got to get up. Because she's got the burden. That's why they get another chance to come out here.

But why? He's a flip flopper. He's a liar. You said it was an accident Mr. Wafer. You said it was an accident. Oh please. He said it was an accident cause he didn't know how to explain it. It happened.

And when you look at the interview please look at how many times he tries to claim it was accident. No. He's clear on that hour interview. Clear as day.

Do you think this man is making up his legal defense

in the back of that squad car while he's alone, horrified, just killed somebody and he's staring at his front porch, where the body is. I mean that was, that was cruel to do to him. He forgot his phone was in his pocket when he's in the back of squad car.

He is so out of it. The 911 call, Ted may have hung up on the dispatcher. Ahh ahh. 'Cause he was so out of it. And when he said he word accident, take it--do we always say things that we, are we always articulate and word smiths.

Was he trying to use that term to manipulate? No. And I have to tell you a quick funny story about my kids. And I have two boys. They're nine and eight. Twelve months apart.

And they're always on each other. And when they were younger, my older one hit the younger one like we always do. And sometimes it's an accident. Sometimes it's intentional. And I have to know which one is which 'cause it's different.

So I asked Bradley. Bradley was this, did you hit your brother on accident or was intentionally. He said, which one means I don't get in trouble. And I was like, no no no.

It's, you don't, you know, it's Ted wasn't using it that way. My son was trying to manipulate the words. Ted wasn't. He wasn't trying to manipulate the words.

I don't know what the false exculpatory statement

jury instruction is. He was honest and reasonable. He's not a liar. Why not call 911?

Well, I think now that you've heard the evidence it's clear why he didn't call 911. He wanted to. Ted wished he could have found his phone.

Two days ago I couldn't find my phone all day. I left it in my office. And I came down here I didn't have any phone. How many times do we forget where the phone is. I drove off with it one day on the top of my car.

It happens to all of us. He looked, and looked and looked for it. He couldn't find it. And yes he found it afterwards. It's easy to explain now.

Why would he leave door open afer the fact? Because there is multiple people out there he thought. Might think when you hear a shotgun blast, if you're with somebody trying to break in, you're long gone.

And Ted really wasn't thinking at that moment. He just wanted to put that gun down. So he did leave the door open. But that doesn't mean he wasn't acting in self-defense.

Oh, what about Ted's demeanor? Oh are those crocodile tears up there. No. And you know why he didn't cry in that interview? He showed remorse.

Remember when he asked who was it? Oh my gosh, was it a neighbor girl. Oh my God. After the fact he sees the person. Thinks it's younger, shorter and wearing those black

boots.

And he cares. He true, when he said he thinks about Renisha everyday, he does. And it haunts him. And it haunts his nightmares. And he knows who that young woman is now.

And he knows that he took that life away. And he wish it never had happened. But he acted and he raised and fired in self-defense. It's a tragedy. It's horrible.

Nobody wants this young woman, we all want her back. But you got to put that aside. And you got to look at the law of self-defense. He was real up there. He was so real.

And you can hear in the squad car and the interview this man isn't faking it. He's really, really remorseful. And fearful.

Renisha can't speak for herself. I know that was coming. How many times I hear that. She did speak for herself ladies and gentlemen. That night, look at all her actions that night.

She didn't deserve this. Nobody deserves this. Never. Because it could have been a mistake. It could have been. But the law doesn't, it doesn't matter.

At that moment and the circumstances Ted's going through, with everything going around him, was it honest and reasonable to think you're about to get hurt and it's about to happen now? Yes.

Oh the blood. Oh, I want to, I do want to; I know

some of you keep really good notes. And some you correct me when I'm up there.

And I wish you guys could have asked questions. Well, the ones we got. 'Cause I think since you're--

THE COURT: Move on. That's my decision Ms. Carpenter.

MS. CARPENTER: I'm gonna be giving you the case. I kinda do feel like this. It's kinda like ums working everything. And I will be giving you this to take back that.

And I feel like I've gotten to known all of you a little bit. I kinda know your personality. I know who always nods and writes notes and who eats and does this. And we couldn't have asked for a better jury. Thank you.

From the bottom of my heart. For leaving your kids at home and not knowing what to do. And having to leave your life's for almost three weeks. Thank you. This is a most important thing to Mr. Wafer.

And thank you. All of you. I see you some of you dressed up too and look great. Thank you. It feels weird that it's like done. But I have confidence when I give you this. Confidence. I do.

And the trans--for those of you keeping really great notes, there are more transcript errors in his interviews. Remember yesterday when they said no it's square off. It's sort. And then there's also something in there you need to

correct. And it's clear as day when you listen.

Ted says, she fell backwards. And in the transcript is says jumped. Big thanks. Big thanks.

Oh, 10 minutes. Okay. Just a couple more things and I'll be done. That was admitted as defendant's exhibit O.

(D-Ex O shown to jury via projector)

MS. CARPENTER: This was, and I understand Renisha's family had a vigil. And they went to Ted's house. Ted wasn't there. But no, the police weren't there. And look what they let them do.

This happened on November 8th, and actually it's 2013. When did the dust for fingerprints? When did they really do anything to, to do anything in this case. Why didn't you do more?

And I gave 'em an out. I said do you think more could have been done? No. If he would just said, you know what, yes some mistakes were made, we contaminated the scene, we didn't get all the evidence I should not have jumped to a conclusion.

I shouldn't have said there was no breaking. Oh, yeah. The scene is more than just the porch. Oh yeah, that footprint mattered. That footprint. That footprint. Should have collected it.

They should have investigated. You should have seen if somebody else is running down the street. You could have.

You see what David Balash would have done. He would have taken that whole dang thing off and taken it to the lab. He wouldn't let 'em sit there for 10 days in the rain, snow and this going on.

If there was ever any other evidence of breaking, we have evidence of breaking, it's gone because of the police work in this case. And it makes me so mad. Makes me so mad. Ted likes the police. And they failed him. I just ask you not to fail him.

And there's so many errors in this case. I can't even go, I have--oh, the hundred dollar bill. A hundred dollar bill. That's just one evidence.

And then I, I do want to tell you to remember what Detective Sergeant Gurka said to you up here. Remember. And when you take an oath and you're a witness. Especially the officer in charge. You tell the truth and you're not sarcastic and you're flippant.

Remember when I asked, Detective Sergeant wouldn't it be important for that footprint because somebody else could have been there breaking into the back along with Renisha? Well, then that's the one he should a shot. And I just couldn't believe my ears when I heard that.

And then I couldn't believe it where they have their officer in charge advocating killing somebody in self-defense. And it's okay if they're trying to climb in your in the back.

And you haven't broken anything. But then you got the Prosecutor saying you can't do the same thing at your front door.

I just want to end with one thing. My last thing. There is a plaque that my father has found early on in this case. And I do have to thank all of you publically. Thank you team. Thank you.

Down there when you walk into the building downstairs there's this plaque that all of you have passed. And I've never noticed before even though I've been doing this for a long time. And this plaque engraved on the wall right by the jury duty room. Says about a memorial about a case that in 1925, that was so important.

And it was the trial of Dr. Sweet. A Detroit resident who was being targeted. He didn't feel safe in his home. And one night people gather outside his house. They threw something in the window, broke it.

Just like Renisha broke screen. Part of Mr. Wafer's house. On his house. And they had armed themselves. The people inside the house. And they shot.

And then he was on trial for murder Just like Ted. And what's so interesting, in 1925, you know who the trial judge? Who was sitting up there? Frank Murphy. Who this building is named after.

And you know who the defense attorney was, if I

could ever be as good as him, Clarence Darrow. And in 1925, this is what Judge Murphy read to jurors just like you.

"Man's house is his castle. And that Dr. Sweet had a reason to fear for the life's of his family and their property. These rights belonged to the black people as well as whites."

Acquitted, the Sweet family moved back into their home on Garland Avenue in Detroit. An important legal president had been set. Dr. Sweet was black. And back then in 1925, they didn't know if African Americans could use self-defense.

And that case, they said that was self-defense. Acquit, acquitted. And these laws of self-defense applies to every single person no matter what your race is. And that jury sent Dr. Sweet home.

And I ask you all to send Ted home. Find him not guilty on everything. Ha acted in lawful self-defense. Thank you. Thank you so much. well you know if

THE COURT: Thank you Ms. Carpenter. Please proceed Ms. Siringas.

(At 11:21 a.m., Rebuttal Argument by Ms. Siringas)

MS. SIRINGAS: Good morning, ladies and gentlemen.

JURY PANEL: Good morning.

MS. SIRINGAS: Ms. Carpenter, in some way has tried to portray as some how a different case. Some how a different

case than a typical murder case. We have murder cases in this building, unfortunately, way to many times.

I'm the head of the Homicide Unit. I've seen more homicide cases than I care to recall, than I care to describe to you ladies and gentlemen. But this case is no different than a typical murder case.

This defendant is no typical, no different than a typical murder defendant. Murder defendants try to deflect, try to lie. Try to get themselves out of trouble. We have an expression that we use. He's gone all defendant on us.

And what that means is, the natural instinct to protect yourself. To protect yourself from what you think the law is about to inflict on you. Which is a conviction for murder in the second degree.

And your instinct for self-preservation is to make up something to get you out of trouble. So in that way he is no different than your typical defendant. He's a homeowner. Yes he's a home owner.

Some, does that give you special rights to kill an unarmed teenager knocking on your door. He's a home owner for whatever reason in his life. And you know Ms. Carpenter have asked you a number of times to get yourself inside the head of Ted Wafer.

I don't know that you can do that. I don't know that's, but nonetheless, we have to prove what his actions

were. And sometimes you prove intent by what his actions were. You're not gonna be able to get inside his head. You're not him.

But his actions speak louder than words. And his actions this night were confrontational. His actions this night were somebody was pissed off. Why? What's happened in his past.

Ms. Carpenter when through it a little bit. Fifty-five year old guy. Not married. People making fun of him. When you're--

MS. CARPENTER: Objection, your Honor. Oh, for the van yes. I'm sorry. Ha ha ha. They did.

THE COURT: Thank you. Go ahead Ms. Siringas.

MS. SIRINGAS: Why aren't you married? Why you got this van, you know. I don't know what his issues are. You saw him being interviewed.

Some of the things that seem to bother him, some of the things that he seems to take to heart, some of the things that he talks about. That caused him to load that shotgun. And I'm not gonna pick it up again.

Because maybe people that don't know how to handle guns shouldn't handle guns. And Mr. Wafer, initially when you talk about manipulation and trying to portray yourself to law enforcement in a certain way. He tried to manipulate a lieutenant.

He tried to manipulate a lieutenant into thinking; I really don't know that much about guns. You know, I got this--he calls it, he says I got this little Mossberg. Or you know, 12 gauge shotgun. Come on. Is it little? It's a shotgun. Twelve gauge. It's pretty big.

I got this little shotgun, you know, I just got you know for self-defense. I never really use it. I don't hunt. And then we find out on the stand that he's a hunter. He knows how to use shotguns. He knows what they do.

But in that instance, when he was talking to law enforcement he was hoping that he could get away with this accident scenario. He was hoping that law enforcement would buy that this is an accident ladies and gentlemen. And that's why it's a lie.

Because within five days; when the case was in the investigative state. One of the early things, when you talk about what we did or what we didn't do. One of the first things that we asked the Michigan State Police to do.

We asked Kolonich to tell us. Can that gun just go off accidentally? Just like the defendant said. That's what he said. We asked the police do that. Do that test for us. All of the experts agree, that gun doesn't go off accidently.

He threw it down. He hit it. It just discharge unless somebody intentionally pulls that trigger. Both Kolonich testified to that and their expert, Balash said nope.

That gun doesn't go off accidentally.

That gun has a safety on it. That gun has to be racked. That gun has to be loaded. That gun to be aimed. And that trigger has to be pulled.

That's how that gun discharges ladies and gentlemen. That's what the facts are. And Mr. Wafer was charged. Because that's what the facts are.

He says I shot it accidently it doesn't off accidently. Therefore, the evidence is clear that he committed this murder. He gets charged.

His lawyer gets the information. His lawyer knows that the gun just doesn't go off accidently. And low and behold we have to come up with a whole new defense ladies and gentlemen.

We have to come up with the different theory so I can be acquitted. So you can send me home. The never of bring Dr. Sweet into this. And armed community surrounded his home.

MS. CARPENTER: Objection, your Honor.

MS. SIRINGAS: That's what--

MS. CARPENTER: There's no evidence of that.

THE COURT: There was no evidence of Dr. Sweet before you brought it up. Let's let her continue.

MS. SIRINGAS: It says on the plaque. An armed--

MS. CARPENTER: Oh, I'm sorry.

MS. SIRINGAS: That's what she read into the record. An armed community came to his house. If 10 armed people came to Mr. Wafer's house and they surrounded his house. I could guarantee you he wouldn't have been charged.

But who's on his porch? Injured Renisha McBride, with a concussion. That's who's on his porch. He's not under attack by armed citizens of the community.

The only thing that's happened to him, is somebody woke him up from his sleep. That happened. And you know, if I hear one more time that we're really not trying to attack Renisha McBride.

But you know, she was drunk. She was high. She did this. She did that. Here's Ted. He was at the bar. He was doing this.

If they're not trying to attack her, why are they telling you all that stuff. They want you not to care about Renisha McBride. They even had Dr. Spitz up there opining. And she said it in closing.

This all happened because Renisha McBride was drunk. The nerve. The victim deserved it. This all happened because Renisha McBride was drunk and high.

You know what, go to any campus on a Saturday night I bet you're gonna find a lot of Renisha McBride's that are .21 and probably have some marijuana in their system. Go to any suburb and some people around my age, maybe sitting in

their home smoking some marijuana and having a couple of cocktails.

Do they all need to be executed. You know, when she talks about, and I wrote this down. That the police decided to be judge, jury and executioner. No ladies and gentlemen. That was Mr. Wafer.

That's who decided here to be judge, jury and executioner. That he has the right, he thinks, to kill an unarmed teenager on his porch. That's what he decided that night. And that's what he did.

She concedes that. She said, we're not gonna talk about all the elements. Okay. Great. You know, I'm sorry for you Mr. Muscat. That you went through all that.

But you know, defendant says, yep, you've proven it. You've proven murder 2. You've proven the manslaughter. That's what the defense says. You've proven it. Check the boxes.

So the only issue is was he honestly and reasonably in fear? That's it. We don't have to talk about it. And I'm not gonna talk about it. We've proven it beyond a reasonable doubt.

He said it on the stand. I pulled the trigger intentionally. Mr. Wafer? I pulled the trigger intentionally.

Took him a while. He's having a hard time saying

that. 'Cause we went back and forth. Is it accident. Is it this.

And you know, sometimes I hope as we sit here in this courtroom, we don't offend any jurors. We're not trying to scare any of you. We're not trying to offend you. I think all of us here are trying to do our jobs.

Because our job, ladies and gentlemen, is to see that justice is served. Our job is to prosecute the guilty. And your job is to make that determination. You decide whether or not we've done our job properly. That's your decision.

You have to tell us whether or not we've met our burden. We don't run away from our burden. It's our burden. That's what our constitution says. We don't take it lightly that we would charge a home owner. We don't take that lightly.

There's plenty of home owners that haven't been charged. We look at the law. We are guided by what the law requires. And the law in this case required a charge of murder in the second degree. And the intentionally aiming that gun.

You guys get to make the final call. There's no self-defense here. Where's the fear? Where's the fear?

You know, and when you read that instruction one of the things that I want to tell you is the self-defense came

after it was clear that the accident wouldn't work. After it was clear that all experts says the gun doesn't go off accidently. And was that testimony kinda coached?

You know, how many times did I ask him and Mr. Muscat said he admitted, that Mr. Wafer admitted he pointed. Mr. Wafer, even though you see him on the video pointing the gun. He demonstrated how he pointed the gun. You see that.

He does it with his own hands. We're not making stuff up. It's on the video. How he pointed that gun.

And how many times did I ask him, and did I try to get him to talk about pointing that gun. Well, no, it really wasn't pointed. You know, why?

Because he knows what's in that instruction. He knows that if he says he pointed it he's guilty. So he's just a typical defendant trying to protect himself.

Even, I mean to get self-defense like Mr. Muscat said, you got to be in fear. He says I was in more than I could ever imagine. Why not say that then? If you were.

Why not say it? What are you so afraid of; to tell the jury. 'Cause he knows when he says I pulled that trigger, that has legal consequences. I intentionally pulled that trigger.

That's what he said. I intentionally pulled that trigger and shot an unarmed teenager who had the nerve to be knocking on my door looking for help. If that's what our

society has come to, if that's a justifiable homicide, then we can just shoot down unarmed teenagers on our porch that we saw for an instant. But we saw them.

He knew she was there. If you look at that video, he said I heard the noise coming to the front door. And now I went and got my gun.

That fact that we know he's making up evidence to try to kind of tailor it what the jury instruction; cause you're gonna see the jury instruction that says did he know of different ways to protect himself? And they know that a big issue that they have is that he didn't call the police.

If he's so scared, why not call the police. They know that's an issue. So they got to get up there now an create some new lie. I couldn't find my phone. I didn't know where my phone was.

This is a little, 11 hundred square foot home. Within a minute Renisha McBride was dead. How much time did he take to look for that phone. He says the whole thing took about a minute. Two at the most.

Was he looking for that phone? What did he tell the police when he was first interviewed? I sure wish I called you guys now. Yep.

And you just killed somebody on your porch. You know, I'm in a lot of trouble now. This is really serious isn't it? You're recording aren't you?

Very conscious of what's going on. Not a confused gentlemen. But somebody who's trying to manipulate the officers. Somebody who's trying to make the officers believe his story. That's what you see on that video.

He's trying to sell a bill of goods. And no where does he say I couldn't find my phone. He said I shot her. Then right to my phone. I wish I could've called you guys. Wouldn't that be the time? But I couldn't find my phone. Wouldn't that make sense?

What's so hard about saying, I shot her and I was in fear. He couldn't get out the legal concept. What legal concept? I mean it's everyday common sense.

Man that girl was coming through my house. I was scared. And I shot here. What's so hard about saying that.

If that happened, he woulda said it. If he did it because he was in fear, he would have said it. It's not about his manhood. Did you hear him yesterday talking about, I didn't want to admit in front of the detective, you know, that it wasn't a man.

I don't know what issues he has about not being a man. But that's not for us to talk about here. I don't know. It's not about him.

And we kept hearing in this courtroom continuously. It's about him. It's just about Mr. Wafer. Well we've got a dead 19 year old. How dare you say that it's only about him.

How dare you.

MS. CARPENTER: Objection, your Honor. And I hate to object. But the case law is clear. They have to put themselves in Mr. Wafer's shoes for self-defense.

THE COURT: Well, I've read the instruction. You can continue Ms. Siringas.

MS. SIRINGAS: Renisha McBride is dead, not because she was drunk. Not because she crashed her car. But because she had the misfortune to maybe be confused about where she was.

She had the misfortune to walk on Mr. Wafer's porch. And that's why she's dead ladies and gentlemen. And this was no self-defense. He could not have honestly and reasonably believed that he was under attack.

Do you open the door and go confront your attacker? He wanted a confrontation, as Mr. Muscat told you. That's what this was all about.

He was upset about his car being paint balled. He thought it was some neighborhood kids. He was gonna shove a gun in their face. They're gonna run away. And said, hey there's a guy with a big gun that stays at that corner. Stay away from him.

He wanted that to get around the neighborhood. That's what this was all about. And in the process of doing all that, he shot and killed Renisha McBride.

There's no justification. There's no excuse. It was not done in self-defense. We ask you to return a verdict of guilty on murder in the second degree, the manslaughter and the felony firearm ladies and gentlemen.

THE COURT: Okay. Thank you both very much. All right. Ladies and gentlemen, when you go to the jury room you will be provided with written copies of these final jury instructions that I'm reading to you know and that I read to you yesterday.

(At 11:40 a.m., Continued Jury Instructions by the Court)

THE COURT: You should first choose a foreperson. The foreperson should see to it that you're discussions are carried on in a business like way. And that everyone has a fair chance to be heard.

A verdict in a criminal case must be unanimous. In order to return a verdict, it is necessary that each of you agree on that verdict. In the jury room you will discuss the case among yourselves, but ultimately each of you will have to make up your own mind.

Any verdict must represent the individual considered judgement of each of you. It is your duty as jurors to talk to each other. And make every reasonable effort to reach agreement.

Express your opinions and the reasons for them. But

keep an open mind as you listen to your fellow jurors. Rethink your opinions, and do not hesitate to change your mind if you decide you were wrong. And try your best to work out your differences.

However, although you should try to reach agreement, none of you should give up your honest opinion about the case just because other's disagree with your or just for the sake of reaching a verdict. In the end, your vote must be your own. And you must vote honestly and in good conscience.

In this case there are a few different crimes that you may consider. When you discuss the case you must consider the crime of second degree murder first. If you believe that the defendant is not guilty of second degree murder or if you cannot agree about that crime, you should consider the less serious crime of manslaughter.

You decide how long to spend on second degree murder before discussing manslaughter. You can go back to manslaughter after discussing the less serious crime if you want to. If you have any questions about the jury instructions before you begin deliberations or questions about the instructions that arise during deliberations, you can submit them in writing to my deputy.

When you go to the jury room you will be given a written copy of the instructions you have just heard. As you discuss the case you should think about all my instructions

together as the law you are to follow. If you want to communicate with me while you are in the jury room, please have your foreperson write a note and give it to the deputy.

It is not property for you to talk directly to the judge, the lawyers, the court officer or any other people involved in this case. As you discuss the case, you must not let anyone, not even me know how your voting stands. Therefore, until you return with a unanimous verdict do not reveal this to anyone outside the jury room.

I will send the exhibits in that have been admitted into evidence, with the exception of the weapon. If you want to see that, send a note. And I will send it in with my deputy.

I've also prepared a verdict form listing the possible verdicts. And before I send you in to deliberate we have to choose our alternates. I could retain the two alternates while the remaining jury panel goes in to deliberate, but I'm not going to do that.

I'm just going to instruct you that you are still considered as participating in part of your jury service, although you're not deliberating. So you're not excused. You cannot watch any news reports. You cannot do any sort of research. And you're not free to discuss the case until a verdict is finally reached.

Now let's choose our alternates. And if you are

(Juror #1 raised her hand)

THE COURT: All right. Juror, I just want to let you know that your image will not be recorded. But there will be an audio recording. I understand that you've reached a verdict?

JUROR: Yes.

THE COURT: Okay. Could you please came as close to that microphone as possible and read your verdict.

JUROR : Is this good.

THE COURT: That's perfect.

JUROR: We the jury find the defendant Theodore Wafer as follows: Count 1, Murder in the Second Degree. Guilty of murder in the second degree. Count 2, Manslaughter. Guilty of statutory manslaughter. Count 3, Felony Firearm. Guilty of felony firearm.

THE COURT: Thank you very much ma'am. Can you hand that to the deputy. You can have a seat. Ms. Carpenter would you like to have the jury polled?

MS. CARPENTER: Yes, your Honor.

COURT CLERK: Juror number 1, was that and is that your verdict?

JUROR ONE: Yes.

COURT CLERK: Juror number 2, was that and is that your verdict?

JUROR TWO: Yes.

the Prosecutor and the Defense agrees that PRV 1 to 6 should be zero.

THE COURT: Okay.

MS. CARPENTER: They believe PRV-7 should be 10. We believe it should be zero. PRV-7 is-

THE COURT: Subsequent or concurrent felony convictions.

MS. CARPENTER: Correct. And this is the issue on this case. When we had, we have an inconsistent jury verdict. We have a conviction for murder in the second degree. And we also have a conviction for manslaughter.

And there wasn't, that is one conviction. I don't know they're getting a concurrent conviction with that. I will let the Prosecutor's put on the record what I was told today.

But remember, your Honor, and I do want to place this on the record. That in the middle of trial we had a bench conference. And we brought up--and Danielle Hagaman-Clark was still here. And we brought up-

THE COURT: The People said one needed to be thrown out.

MS. CARPENTER: Right.

THE COURT: I remember.

MS. CARPENTER: And they say, if they convict-

MR. MUSCAT: No, we didn't.

MS. SIRINGAS: It's okay.

THE COURT: Go ahead.

MS. CARPENTER: If a jury convicts on both we will throw the lesser out. And actually Samantha Burris and in--

THE COURT: Well, I think it was said that I would have to throw one of them out.

MS. CARPENTER: Right.

THE COURT: Go ahead.

MS. CARPENTER: Right. Because you can't have, there's one death. Where Mr. Wafer is not gonna be sentenced to murder 2 and manslaughter.

THE COURT: He has to be. They are different elements.

MS. CARPENTER: But, your Honor, remember-

THE COURT: That's the problem. Even though they said something at sidebar that's not the state of the law.

MS. CARPENTER: Your Honor,--

THE COURT: Go ahead.

MS. CARPENTER: Defense relied upon what they said at sidebar. And your Honor, also agrees that they said it. I know they disagree that they said it. They also told me that two weeks prior, prior to trial.

Danielle Hagaman-Clark told me up in her office the same exact thing. Now, they're trying to come in and say no no no, now Mr. Wafer's gonna be convicted of three felony

counts. He is gonna go to prison for murder, manslaughter and then the felony firearm. Which just follows whatever--it's in consistent.

It is improper. And we relied on information they are now going back on and saying they never said that. I shoulda put it in writing. And I don't think we got it up on the record.

THE COURT: No, I don't think it was on the record either. But I think the assumption was that one, it didn't matter if one was going to be thrown out anyway, because the other one would be subsumed if that's and accurate term; by the greater conviction.

MS. CARPENTER: Right. But now-

THE COURT: Which happens all the time. I mean, we--there's multiple charging's that happen all the time where I do have to sentence on each conviction. As long as they're different elements.

And in this case there are different elements between murder 2 and statutory manslaughter. But go ahead. Let's hear from the People.

MS. CARPENTER: Right. Your Honor, if I could still a couple things.

THE COURT: Oh, yeah. Go right ahead

MS. CARPENTER: So also with PRV. If you look also at the plain language of PRV. Let's see, the Prosecutor

mentions in footnote 1, of their memo. That malice isn't required for a violation of this. But the statute actually says that what Mr. Wafer was convicted of was an offense without malice.

Nobody, no jury found malice in this case. And this means a conviction of second degree murder on this, requires malice. And statutory manslaughter without malice are legally inconsistent.

So you shouldn't use that to score this. This should be zero, your Honor. PRV-7 should be zero for the plain language of it. And for what the Prosecutors and the defense--what the Prosecutor's told defense prior to trial and mid-trial. And now they're going back and now trying to get 10 points on this when it should be zero.

THE COURT: Where are-do you have the elements of statutory manslaughter handy? I believe that when it says without malice, that's just something that needn't be proved.

MS. SIRINGAS: Right.

THE COURT: It's not-

MR. MUSCAT: Right. The key to this analysis-first of all Judge, I have to clarify the record.

THE COURT: Go ahead.

MR. MUSCAT: Because there were several prosecutor's at several sidebars during this trial.

MS. CARPENTER: There certainly were.

MR. MUSCAT: During one sidebar we were discussing the verdict form. And there was a suggestion that the jury couldn't find the defendant guilty of murder and count 2 or the lesser of gross negligence on count 1 and count 2. And it was represented that the jury could.

And they said if you want we'll look into the possibility of a merger at sentencing akin to a murder 1 felony murder situation. But that's all we said. That we would look into the matter.

And it wasn't something that had to be decided before the jury got the case and before the verdict form was completed. And that's there it was left. Since then we talked to Mr. Baughman.

And of course we looked into the matter. Count 2, has an element that count 1 does not require. Count 2, has an-

THE COURT: It's the use of a firearm.

MR. MUSCAT: --Element of the use of a firearm. That makes it a separate count. This is completely analogist to a situation where a defendant is convicted of murder in the second degree for use of a vehicle under the third prong of murder in the second degree.

And it's also convicted of driving away, leaving the scene of an accident causing death. It's the exact same scenario. You've had cases like that before.

Defendant kill somebody. His level of, his state of mind reaches the third prong of murder 2, because of say, DUI narcotics, his driving. And then as he kills somebody he leaves the scene.

And so he's charged with that 15 year felony on count 2. This is the same situation. Mr. Wafer is convicted under murder 2, because the jury believed he intended to kill or he intended to commit great bodily harm. Or the third prong.

And he also is convicted of the intentionally aiming. Because he used a firearm in the manner consistent with those elements. They're separate counts. No one promised defense counsel that these would merge.

The only thing we said is that we would research the topic. And as the Court has succinctly stated already, our goal is to follow the law. And the law is clear that these are separate convictions.

The only relevance to the fact that there's a count 2, in this case is how it affects the PRV scoring. Because the sentence on count 2, is gonna be consumed by the sentence on count 1.

THE COURT: Yeah. And that's what I was saying. I think the wrong wording was used at sidebar. But I think the same result is ultimately reached.

'Cause my concern was whether or not they could be

convicted on both. And if they were, I think I was represented I would just have to toss one. But-

MR. MUSCAT: No, it was rep-what was represented and I'm not sure who said what. But what I recall was that we would research on whether or not there needs to be a merger the murder 1, felony murder situation that we run into all the time. And the law is clear.

Because there is a separate element contained in count 2, we don't have to have that merger. And we did. We talked to Mr. Baughman.

We researched that. And we're confident, you will give him a sentence on count 2. And that will run concurrent to the sentence on count 1.

THE COURT: I think that--

MS. CARPENTER: And for the record, your Honor.

THE COURT: Go ahead.

MS. CARPENTER: The Prosecutor did state, at sidebar we will nolo pros. We will dismiss the count.

THE COURT: I didn't hear that. I heard that I would have to toss one if they couldn't be convicted of both.

MR. MUSCAT: Right.

THE COURT: I don't remember ever hearing anything that they would look into a felony murder or a murder 1. But regardless. It truly makes no difference given--'cause attorneys say things that aren't the state of the law all the

time.

And whether or not their representations are correct or not, I'm still bound to follow the law. And in this case they are different charges. They are different elements. I don't, and I was just reviewing firearm intentionally aimed.

I don't see anything that--I think that fact that it says without malice is just something that needn't be proved. It doesn't mean that without malice should have been proven. So I don't think that that makes them an inconsistent verdict.

For that reason I think 10 points is accurate. But that doesn't change where we're at right now. We're still at 180 to 300.

MS. CARPENTER: Yes.

THE COURT: But your objection's noted. And that will be interesting to take up Ms. Carpenter.

MS. CARPENTER: And, your Honor, I would--thank you. And this trial has been interesting. It continues. Your Honor, it does change a lot.

And I just want to put on the record the guidelines. If you would have scored that at zero, for murder 2, would have been 144 to 240 months. And now, your Honor, I believe you said 180 to something.

THE COURT: Yeah. So it would've been, rather than being what, we're looking at 15 to 25. It would have reduced it from that to 12 to 20. All right. It's noted. Okay.

actions amount to murder in the second degree. Murder. Not manslaughter. And we ask the Court to sentence him accordingly.

THE COURT: Okay. Go ahead Ms. Carpenter. You can argue your position before I give you client an opportunity to speak.

MS. CARPENTER: Thank you, your Honor. The jury has spoken. I still can't accept their verdict. But I will for purposes of sentencing. And I will not argue that this should have been manslaughter or should have been an acquittal because of self-defense. That's not the proper place.

But the Prosecutor is right. And I wrote it in a sentencing memo. I am asking this Court to sentence within the manslaughter guidelines.

Those would be, as how the Court has scored it, I have it down as 43 to 86 months plus the two years. And I know, your Honor, there's a big gap between my position and the Prosecutor's position. They're asking for 15 plus two.

That's 17 years in prison, your Honor. That's a death sentence. Mr. Wafer is 55 years old. If you give him 17 years he will never get out.

You had an opportunity to talk to these jurors and we didn't get that. And they don't think he's a bad guy. They don't want a life sentence. They told you that.

If you give him 17 years it's a life sentence, your

Honor. So, so what I am asking, your Honor, is to depart. I gave you numerous reasons in my sentencing memo, why to depart in this case.

And I want to step back before I, before I do it I do want to address the McBride family. And Mr. Wafer will speak. I don't know if I can, I never know if I can look at--

THE COURT: Just face the Court. You can address them. Face me.

MS. CARPENTER: Because I never know what's proper. And I want to explain it. Even me, as a lawyer, who's done this for 15 years. When you're in a courtroom and you have a victim's family who's in pain; it's not easy to go up and shake their hand and say I'm so sorry.

So when they said they haven't heard and apology it's because of me. Mr. Wafer will make his statement. But I will tell you. And I hope the McBride family will understand from the day one, I met Mr. Wafer he didn't think about himself.

He wasn't my typical client, would be going. What about me? What about me? His first question to me, after he learned there as an autopsy was, does that mean her parent's don't get to bury her?

Does that sound like somebody who's not remorseful. Who doesn't care. He has nightmares about Ms. McBride. And he took a 19 year old woman's life. Gone.

He lives with that everyday. It's, so when I hear that he hasn't taken responsibility, he has. And his remorse is more than any client I've ever seen. And I do get emotional about this case. And about Mr. Wafer.

And I'm sorry. And I know my dad has told me don't cry in court. Ha ha ha.

THE COURT: You're not a robot. Go ahead.

MS. CARPENTER: I'm not. And I really care about this man. I do Ted. And I feel like I let him down. And I'm hoping you don't, your Honor.

Let him get out of prison. And I will give you the legal reasons why you can. And I will compose myself.

And that's not what I said in my opening statement. I tell a story different than Mr. Wafer. We're completely different people. I am so emotional. And he's not. That doesn't mean he doesn't feel. And he does.

Substantial and compelling reasons, your Honor. And I wanted to step back and say for sentencing there's two goals. There's punishment, which I believe there should be. A 19 year old girl is dead.

The McBride family wants some justice. And they should get some incarceration. I agree. But then you have to balance that with rehabilitation as the trial Court.

So you've got the balancing act of how much do I punish a man. And how much can he be rehabilitated. And in

this case, your Honor, I was telling the Prosecutors. I don't, on murder 2 convictions and the sentencing guidelines are so low. Usually I'm scoring hundreds of points on things. Not for Mr. Wafer.

He is--rehabilitation for Mr. Wafer is, is high. You have Dr. Gerald Shiner's report. He did a psychological evaluation of Mr. Wafer.

THE COURT: I read it.

MS. CARPENTER: And he says in it that he is, no history of violence. No loss of control irritability. No antisocial trends. He's a mild mannered withdrawn man who's structured his time with compulsive work habits.

He represents no risk to the community. There's no paranoia in him. He has no prior episodes. He has a good; this is Dr. Shiner who is very respected psychiatrist in these, for psycho evaluations with the Court.

He says he has a good rehabilitation potential. For understanding the destructive nature of his actions to himself and the community. And that he says, Dr. Shiner, in his professional opinion says, Mr. Wafer represents very little risk to the community. And that there would be no befit to Mr. Wafer or the community in a lengthy confinement.

Mr. Wafer's never ever gonna own a gun again in his life. It will unlawful. And he never wants to touch a gun again.

And his only way to re-offend is if he owned a shotgun. If he didn't own a shotgun and he wishes he didn't have one that night. And this never woulda happened.

He is, he was always good on bond. He always showed up. He is not, he needs to get some therapy. So, your Honor, so when you balance those two.

And I think you need to look at the substantial and compelling reasons to show that there is much rehabilitative potential. And that Mr. Wafer deserves a chance to get out of prison at one day. And I know you've read my sentencing memo.

And I've listed, I've given you, you know, your Honor. You're an intelligent Judge. You know that you only need one substantial and compelling reason to depart downward. And I gave you about 11 of 'em. And just like a reasonable doubt, you just need to pick one.

And they have to be verifiable. You can't just make 'em up. And they can't be recognize already in the sentencing guidelines. And I have given you things that are articularable.

That aren't in the guidelines. And that apply in this case. His prior record is number 1. He's got two drunk driving's from 1998 and 1994. Nothing since then.

That shows you, your Honor, he can be rehabilitated. He did have a little bit of a pattern there drinking and driving. And then when his second time came around and he got

treatment, he walks to the corner pub if he goes couple times a month. It shows.

He learns his lesson. His age, your Honor, is the second reason. He's 55. He's not an 18 year old kid that you could give a 20 year sentence to and will get out.

Work history. He has, as Dr. Shiner said, he kind of did get compulsive with work. That's where he put all of his energy into. And just days before this shooting Mr. Wafer asked for a change in his position at the air port.

He went from outside building maintenance to inside work. He, it's a demotion. He wanted it. He got a little bit less money. But his health was getting to be a point where he couldn't take the outside work. He was gonna learn computers for the first time in his life.

And this was just days. And I think that also goes to show you what kind of man pulled that trigger that night. And aging man who likes his neighborhood and was scared.

The forth reason. Circumstances around his arrest, including cooperation with the police. I, I don't know why the Prosecutor is saying he is not cooperative. And I tried to explain. And Mr. Wafer didn't lie.

He did say accident. But it was one of those semantics. When you say a word and you don't know how it happened. In the heat of it, you're like it was an accident. It wasn't.

And he took responsibility. He didn't say somebody else did it. He never said Renisha grabbed for my gun or it dropped on the floor. That would have been avoiding responsibility.

Number 5, your Honor, I went over that in length. How you can rehabilitate Mr. Wafer. I, there's no escalation of the crime by law enforcement. I'm still just, though if there was more evidence collected a better investigation done. We woulda had more proof she was breaking and entering.

He didn't do any community service. Community support, your Honor. I do want to talk about this for a minute. I gave the Court about, I think 15 letters of support.

THE COURT: I read them.

MS. CARPENTER: And what was amazing, and I hope you read the one from Larry Bagger. Larry Bagger is a CEO of a company in Chicago. He called me out of the blue months ago.

He went to college with Mr. Wafer. They played at Northern Michigan University on the football team together. And that hadn't stayed in contact. But Mr. Bagger called me up and was shocked it was Ted who got into this situation.

He said, of all the men on the football team, Ted was a starting defensive on the defensive line as a freshman. Steve Mariucci was quarterback. I always think that's great. And Ted dropped out after a year of college. He couldn't

quite, you know, he didn't--he didn't think he had the intelligence for it.

And he, even though he's a college football player he was the most mild mannered, get along with everybody type of guy. And that's who he is today. He is not outgoing.

He's never had, and you saw, I gave you some--the Free Press talked to some neighbors that I couldn't get to talk. And they all said--did you read that one Free Press article where the neighbor said, I talked to Ted after the shooting. He was so scared.

And they all think he's a good neighbor. Nobody wants to get involved. That's why you're not seeing all their letters. But I have talked to many of 'em. Nobody has any issues with Ted in the neighborhood.

He's that type of neighbor you want. He keeps the corner house clean. He helps cut the lawns for the elderly people. He gives out the best Halloween candy, according to one of his teenage neighbors.

Your Honor, and the ninth reason for a substantial and compelling reason to depart is his family support. Mr. Wafer's family is everything to him. It's his world. That's why he doesn't have a wife.

He kind of never found the right woman. And then he just kinda gave up on ever having his own family. So he, he has an elderly mom with dementia who will die soon.

His father, who is his best friend died about two years ago. And I just ask, when you think about family support, he's got a brother and a sister also. That he can get out at some point to see his mother before she dies.

There's no drug problems. Mitigating circumstances, your Honor. You heard that in trial. You know why, and this wasn't planned. He didn't go out looking for this. It came t him, your Honor.

And maybe he did make a bad choice in opening that door. But the choice doesn't define who he is as a person. Less serious nature of the offense is another substantial and compelling reason to depart.

Your Honor, I really do believe if there was a conviction it should have been manslaughter. It really does fit a manslaughter more than a murder. The jury didn't see it.

Demonstration of good behavior while on bond. He's been, have had no issues. No flight risk. He's always, he's beat me to court a lot of times.

And then the last one. And this is where I'll end, your Honor, and let Mr. Wafer say something. 'Cause I've spoken for a lot. And thank you, your Honor, for letting me, for listening.

Remorse for Ms. McBride. That's not taking into account in the sentencing guidelines. And you heard the

family wants to heard hear. Anybody would. And he hasn't.

And I told Ted to share. It's hard for him. He's a, he knows all eyes are on him. But I think it's better for him to tell you and the family his remorse than if I do. So.

THE COURT: Okay.

MS. CARPENTER: I would ask though, your Honor, that before Mr. Wafer speaks that you do sentence within the manslaughter guidelines. Go on the top of the guideline for manslaughter. The 80 months plus 2.

Or go somewhere in between if you don't think, you think manslaughter's to low, go somewhere in between the two. But if you give him, if you give Mr. Wafer anything more than eight years plus two, he's never coming out of prison alive.

THE COURT: Okay. Do you want to come up with your client.

MS. CARPENTER: Yes.

THE COURT: Mr. Wafer this is the time and date set for sentencing. I understand there's something you'd like to say on your own behalf?

MR. WAFER: Just to the parents, family and friends of Renisha McBride, I apologize from the bottom of my heart. And I am truly sorry for you loss. I can only hope and pray that somehow you can forgive me.

My family and friends also grieve. For, from my fear I caused the loss of a life that was to young to leave

this world. And for that I'll carry that guilt and sorrow for ever.

I only wish that I could take this horrible tragedy back. I ask the Court and your Honor, for mercy.

THE COURT: Thank you Mr. Wafer. This is one of the saddest cases I have ever had. A young woman's life is gone. And an otherwise law abiding citizen's life is ruined.

A common theme from the letters from your friends and family Mr. Wafer, is that of bad choices. And although the evidence clearly showed in this case that Ms. McBride made some terrible choices that night, none of them justified taking her life.

I do not believe that you are a cold blooded murder. Or that this case has anything to do with race. Or that you are some sort of monster. I do believe that you acted out of some fear, but mainly anger and panic.

And an unjustified fear is never an excuse for taking someone's life. In order to take someone's life based on fear, it has to be honest and reasonable. And someone knocking or pounding on your door at 4:30 in the morning, rarely creates an honest and reasonable situation that would justify taking another person's life.

So what do we have. One life gone and one life ruined. I am confident that if you weren't going to prison today you would never commit another crime, for the rest of

your life. I am also certain that you are remorseful and that you regret your actions immeasurably.

However, none of that excuses what happened in this case. And I'm certain that you've thought about the family over and over again. And how the evidence in this case showed that when Ms. McBride was intoxicated, disoriented, injured and bleeding.

Regardless of whether or not she sought she help. She needed help. And when she needed help she ended up meeting her death. I fully recognize that you did not bring these circumstances to your door step. They arrived there. But once they did, you made choices that brought us here today.

I would call it the worst mistake of your life. But I don't know that you can ever us the word mistake to describe a murder. And a person was murdered.

I cannot go below the guidelines. In this case your attorney wanted four to seven. The Prosecutor's Office through the People of the State of Michigan through Kim Worthy's Office have asked for a guideline sentence. And I think that that's reasonable.

I do have to assess costs. Sixty-eight dollars State Cost. Crime Victim's assessment in the amount of $130. You're going to be sentenced to two years for the felony firearm conviction. Which will be consecutive to the murder I

the second degree and the statutory manslaughter convictions. Which will run concurrent to one another.

For the second degree murder conviction, I'm going to sentence you to 15 to 30 years. For the statutory manslaughter, seven to 15 years. You will receive credit for 28 days.

Mr. Wafer you have a right to appeal your conviction and sentence with the Court of Appeals. If you can't afford an attorney one will appointed for you. And that attorney will be furnished with the necessary record required to handle your appeal. And that request sir, must be made within 42 days.

MS. CARPENTER: Your Honor, for the record Mr. Wafer has filed out the notice of right to timely appeal and request for a court appointed attorney. He does request one. And I have handed it to your clerk so it can be filed.

THE COURT: Of course. Thank you very much. That's all.

(At 10:10 a.m., proceedings concluded)

SENTENCING INFORMATION REPORT

Offender: Wafer, Theodore Paul SSN: [redacted] Workload: 1919 Docket Number: 14000152-01-FC

Judge: The Honorable Dana Margaret Hathaway Bar No.: P68588 Circuit No.: 03 County: 82

Conviction Information

Conviction PACC: 750.317 Offense Title: Homicide - Murder, Second Degree

Crime Group: Person Offense Date: 11/02/2013

Crime Class: Murder II Conviction Count: 1 of 3 Scored as of: 11/02/2013

Statutory Max: Life Habitual: No Attempted: No

Prior Record Variable Score

PRV1: 0 PRV2: 0 PRV3: 0 PRV4: 0 PRV5: 0 PRV6: 0 PRV7: 10

Total PRV: 10

PRV Level: C

Offense Variable

OV1: 25 OV2: 5 OV3: ~~50~~ 25 OV4: 0 OV5: 15 OV6: ~~10~~ 25 OV7: 0

OV8: 0 OV9: 0 OV10: 0 OV11: 0 OV12: 0 OV13: 0 OV14: 0

OV16: 0 OV17: ~~50~~ OV18: 0 OV19: 0 OV20: 0

Total OV: ~~110~~ 95

OV Level: ~~IV~~ II

Sentencing Guideline Range

Guideline Minimum Range: ~~225~~ 180 to ~~375~~ 300 or life

Minimum Sentence

	Months	Life
Probation:		☐
Jail:		
Prison:	180	☐

Sentence Date: 9/3/2014

Guideline Departure: NO Consecutive Sentence: NO

Concurrent Sentence: Yes

Sentencing Judge: Dana H Date: 9/3/2014

Prepared By: FOSTER, RENIKA A

Approved, SCAO Original – Court
2nd copy – Corrections
2nd copy – Corrections (for return
3rd copy – Michigan State Police CJIC
4th copy – Defendant
5th copy – Prosecutor
6th copy - Cashier

STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS ☐ Amended	CASE NO. 14-000152-01-FC

ORI MI – 821095J Court Address 1441 St. Antoine, Detroit, MI 48226 Courtroom 704 Court Telephone No. 313-224-0391
Police Report No.

THE PEOPLE OF THE STATE OF MICHIGAN

v

Defendant name, address, and telephone no.
Theodore Paul Wafer
Alias(es) -
16812 W outer Dr Dearborn Heights MI 48127

CTN/TCN	SID	DOB
13722161-01	MI-1552257L	02/08/1959

Prosecuting attorney name: Danielle Joyce Hagaman-Clark Bar no. 63017

Defendant attorney name: Cheryl A. Carpenter Bar no. 62721

THE COURT FINDS:

1. The defendant was found guilty on 08/07/2014 of the crime(s) stated below:

Count	CONVICTED BY: Pleas*	Court	Jury	DISMISSED BY*	CRIME	CHARGE CODE (S) MCL citation/PACC Code
1			G		Murder 2nd degree	750.317
2			G		Manslaughter - weapon aimed	750.329
3			G		Felony Firearm	750.227b-a

*For plea: insert "G" for guilty plea, "NC" for nolo contendere, or "MI" for guilty but mentally ill, For dismissal; insert "D" for dismissed by court or "NP" for dismissed by prosecutor/plaintiff.

☐ 2. The conviction is reportable to the Secretary of State under MCL 257.625(21)(b).

☐ 3. HIV testing and sex offender registration is completed. Defendant's driver license number

☐ 4. The defendant has been fingerprinted according to MCL 28.243.

IT IS ORDERED:

☐ 5. Probation is revoked.

6. Participating in a special alternative incarceration unit is ☐ prohibited. ☐ permitted.

7. Defendant is sentenced to custody of Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM Years	Mos.	Days	MAXIMUM Years	Mos.	DATE SENTENCE BEGINS	JAIL CREDIT Mos.	Days	OTHER INFORMATION
1	09/03/2014	15	0	0	30	0		0	0	
2	09/03/2014	7	0	0	15	0		0	0	
3	09/03/2014	2	0	0	2	0	09/03/2014	0	28	

☒ 8. Sentence(s) to be served consecutively to: (if this item is not checked, the sentence is concurrent)
☐ each other. ☐ case numbers COUNTS 1 & 2 RUN CONCURRENT AND CONSECUTIVE TO COUNT 3

9. Defendant shall pay as follows:

State Minimum	Crime Victim	Restitution	Court Costs	Attorney Fees	Fine	Other Costs	Total
$ 68.00 x 1 = 68	$ 130	$	$	$	$	$	$ 198

The due date for payment is **at sentencing**. Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

10. The concealed weapon board shall suspend for _____ days permanently revoke the concealed weapon license, permit number _____ issued by _____ County.

☐ 11. The defendant is subject to lifetime monitoring pursuant to MCL 750.520n.

12. **Court recommendation:**

September 3, 2014
Date

Judge Honorable Dana Margaret Hathaway

68588
Bar no.

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)

Deputy court clerk

MCL 765.15(2), MCL 769.1k, MCL 769.16a, MCL 775.22, MCL 780.766 MCR 6.427

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THEODORE PAUL WAFER,

Defendant-Appellant.

UNPUBLISHED
April 5, 2016

No. 324018
Wayne Circuit Court
LC No. 14-000152-FC

Before: STEPHENS, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

A jury convicted defendant of second-degree murder, MCL 750.317, statutory involuntary manslaughter (discharge of an intentionally aimed firearm resulting in death), MCL 750.329, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to concurrent prison terms of 15 to 30 years for the second-degree murder conviction and 7 to 15 years for the manslaughter conviction, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. Defendant appeals as of right. For the reasons explained in this opinion, we affirm defendant's convictions but remand for *Crosby*[1] proceedings in accordance with *People v Lockridge*, 498 Mich 358; 870 NW2d 502 (2015).

On November 2, 2013, at approximately 4:30 a.m., defendant shot and killed 19-year-old Renisha McBride on the front porch of defendant's home in Dearborn Heights. McBride had been in a car accident before the shooting, and it is uncertain how or why she came to be at defendant's home. She had marijuana in her system and her blood alcohol level was .218. Defendant admitted that he shot McBride, but he asserted at trial that he did so in self-defense because he thought McBride was trying to break into his home. However, the evidence showed that McBride was not armed at the time of the shooting, and she possessed no burglary tools. The jury convicted defendant of second-degree murder, statutory involuntary manslaughter, and felony-firearm. The trial court sentenced defendant as noted above. Defendant now appeals as of right.

[1] *United States v Crosby*, 397 F3d 103 (CA 2, 2005).

I. JURY INSTRUCTIONS

Defendant first argues that the trial court erred when it denied his request for a jury instruction based on MCL 780.951(1), which would have afforded him the benefit of a rebuttable presumption that he had an honest and reasonable belief that imminent death or great bodily harm would occur. Specifically, defendant maintains this instruction was warranted because there was evidence to support the assertion that McBride was in the process of breaking and entering at the time of the shooting.

We review de novo questions of law, and we review for an abuse of discretion a trial court's determination whether a jury instruction applies to the facts of the case. *People v Dupree*, 486 Mich 693, 702; 788 NW2d 399 (2010). "A defendant in a criminal trial is entitled to have a properly instructed jury consider the evidence against him or her." *People v Dobek*, 274 Mich App 58, 82; 732 NW2d 546 (2007). "When a defendant requests a jury instruction on a theory or defense that is supported by the evidence, the trial court must give the instruction." *People v Riddle*, 467 Mich 116, 124; 649 NW2d 30 (2002). "However, if an applicable instruction was not given, the defendant bears the burden of establishing that the trial court's failure to give the requested instruction resulted in a miscarriage of justice." *Id.* Thus, "[r]eversal for failure to provide a jury instruction is unwarranted unless it appears that it is more probable than not that the error was outcome determinative." *People v McKinney*, 258 Mich App 157, 163; 670 NW2d 254 (2003).

A successful claim of self-defense "requires a finding that the defendant acted intentionally, but that the circumstances justified his actions." *Dupree*, 486 Mich at 707 (citation and quotation marks omitted). The Self-Defense Act (SDA), MCL 780.971 *et seq.*, "codified the circumstances in which a person may use deadly force in self-defense . . . without having the duty to retreat." *Dupree*, 486 Mich at 708. MCL 780.972(1)(a) provides:

> (1) An individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if either of the following applies:
>
> (a) The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual.

In this case, the trial court instructed the jury on self-defense, including the grounds for self-defense, the prosecutor's burden of proof regarding self-defense, the fact that an individual in his home has no duty to retreat, and the fact that a porch is considered part of a home. In addition to the instructions given, defendant argues on appeal he was also entitled to a jury instruction based on MCL 780.951(1), which provides a rebuttable presumption that a defendant who uses deadly force acted with "an honest and reasonable belief that imminent death . . . or great bodily harm to himself . . . will occur" if *both* of the following apply:

> (a) The individual against whom deadly force or force other than deadly force is used is *in the process of breaking and entering a dwelling* or business

> premises or committing home invasion or has broken and entered a dwelling or business premises or committed home invasion and is still present in the dwelling or business premises, or is unlawfully attempting to remove another individual from a dwelling, business premises, or occupied vehicle against his or her will.
>
> (b) The individual using deadly force or force other than deadly force honestly and reasonably believes that the individual is engaging in conduct described in subdivision (a). [Emphasis added.]

Considering the plain language of the statute, these two subsections differ in that subsection (a) focuses on the conduct of the person against whom deadly force is used, whereas subsection (b) focuses on the state of mind of the person using deadly force.

In light of defendant's testimony about his fear arising from the extent of the banging and pounding noise he heard at two different doors of his home, the fact that the banging occurred at such an early hour of the morning, and the fact that there had been other criminal incidents in the neighborhood that summer, we agree that there was sufficient evidence to support a finding that defendant may have honestly and reasonably believed that a person was in the process of breaking and entering his home. See MCL 780.951(1)(b). However, the fact that defendant may have reasonably perceived McBride as attempting to break into his home does not establish that she was actually trying to do so. Cf. *People v Mills*, 450 Mich 61, 83; 537 NW2d 909 (1995), mod 450 Mich 1212 (1995) ("People can appear one way to someone else when in actuality there is something else causing them to act the way they are being observed."). In other words, the principal dispute in this case concerns whether there was evidence to support the occurrence of conduct required under subsection (a).

Given the evidence presented at trial, we conclude that the trial court did not abuse its discretion when it determined that the evidence did not support the assertion that McBride was actually in the process of breaking and entering when the shooting occurred. "A breaking is any use of force, however slight, to access whatever the defendant is entering." *People v Heft*, 299 Mich App 69, 76; 829 NW2d 266 (2012). There was evidence that McBride was "banging" on defendant's front and side doors, which would potentially constitute a "use of force." Nonetheless, the evidence did not support a finding that McBride was attempting to access the house so as to be considered "in the process of breaking and entering a dwelling." See MCL 750.115(1); *Heft*, 299 Mich App at 75-76. On the evening in question, McBride was extremely intoxicated and she crashed her car. Appearing disorientated, McBride wandered away from the crash site and she somehow made her way to defendant's home. McBride had no burglar tools with her at defendant's house, and there was no damage to the locks, door handles, or doors of defendant's home. At best, the evidence showed that McBride loudly pounded on defendant's doors and that the screen in the outer front door had "dropped" down. But, without more, loud ineffectual banging on a door does not support the claim that McBride was in the process of breaking and entering. Moreover, at the point in time when defendant actually fired the lethal shot, McBride had apparently stopped pounding on the door. Defendant testified that he went to the front door, even though he had last heard banging at the side door. When he opened it, McBride came around the side of the home and defendant shot her before she could explain her presence. On this record, the evidence does not support the assertion that McBride was in the process of breaking or entering when she was shot by defendant. Consequently, the trial court

did not abuse its discretion by denying defendant's request for a jury instruction based on MCL 780.951(1).[2]

II. PROSECUTORIAL MISCONDUCT

Defendant next argues that several alleged instances of misconduct by the prosecutors denied him a fair trial. A defendant must "contemporaneously object and request a curative instruction" to preserve a claim of prosecutorial misconduct for appellate review. *People v Bennett*, 290 Mich App 465, 475; 802 NW2d 627 (2010). Defendant objected to the prosecutor's handling of the murder weapon during the prosecutor's cross-examination of defendant. Accordingly, that issue is preserved. However, he did not object to the remaining instances of alleged misconduct or he did not object on the same basis now presented on appeal. Therefore, the majority of defendant's claims of misconduct are unpreserved. See *id.*

Generally, issues of prosecutorial misconduct are reviewed de novo to determine whether the defendant was denied a fair and impartial trial. *Id.* However, unpreserved claims of prosecutorial misconduct are reviewed for plain error affecting substantial rights. *People v Gaines*, 306 Mich App 289, 308; 856 NW2d 222 (2014). Under this standard, "[r]eversal is warranted only when plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings." *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003). "Further, we cannot find error requiring reversal where a curative instruction could have alleviated any prejudicial effect." *Id.* at 329-330.

"[A]llegations of prosecutorial misconduct are considered on a case-by-case basis, and the reviewing court must consider the prosecutor's remarks in context." *Bennett*, 290 Mich App at 475. The propriety of a prosecutor's remarks will depend on the particular facts of the case, meaning that "a prosecutor's comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial." *Callon*, 256 Mich App at 330. "Prosecutors are typically afforded great latitude regarding their arguments and conduct at trial." *People v Unger*, 278 Mich App 210, 236; 749 NW2d 272 (2008).

Defendant first argues that one of the prosecutors committed misconduct when she held the murder weapon in an unsafe manner such that it was pointed in the direction of the jurors during her cross-examination of defendant. The gun in question was admitted into evidence, it was unloaded at the time of the incident, and, as noted, prosecutors are typically afforded great

---

[2] We note briefly that, even if the trial court should have instructed the jury on the presumption found in MCL 780.951(1), defendant has not shown that it is more probable than not that this error affected the outcome of the proceedings. *McKinney*, 258 Mich App at 163. Defendant admitted that he shot McBride and his only claim was that he did so in self-defense. However, there was scant evidence of self-defense while, in contrast, the jury received detailed instructions on defendant's self-defense theory and the prosecutor presented ample evidence to disprove defendant's claim of self-defense beyond a reasonable doubt. On this record, there is not a reasonable probability that the instruction at issue would have affected the outcome.

latitude regarding their conduct at trial. *Id.* Nonetheless, defendant argues that the prosecution's "grandstanding with the weapon" was improper and deprived him of a fair trial because at least one of the jurors appeared startled by the prosecutor's handling of the gun. However, in the course of the trial as a whole, we cannot see that the incident deprived defendant of a fair and impartial trial. The incident was brief and isolated, there was no apparent intended purpose to scare anyone, and the trial court ordered the attorneys not to point the gun at the jurors during closing arguments. Moreover, defense counsel in fact used the incident to defendant's advantage by reminding the jury of the prosecutor's actions, and the jury's reaction, during closing argument, in the context of emphasizing his position that defendant had brought the gun to the door with him in order to frighten the intruder away because the weapon was "scary." Under the circumstances, this isolated incident did not deny defendant a fair trial. Cf. *People v Bosca*, 310 Mich App 1, 35; 871 NW2d 307 (2015) (finding that the prosecutor's demonstration with a circular saw used to threaten the victims did not deprive the defendant of a fair trial).

Defendant also argues that the prosecutor misstated the law during closing argument when commenting on the necessary mens rea to support convictions for the different charged offenses. "A prosecutor's clear misstatement of the law that remains uncorrected may deprive a defendant of a fair trial." *People v Grayer*, 252 Mich App 349, 357; 651 NW2d 818 (2002). "However, if the jury is correctly instructed on the law, an erroneous legal argument made by the prosecutor can potentially be cured." *Id.* In the instant case, defendant was charged with second-degree murder, common-law manslaughter as a lesser included offense, and statutory manslaughter under MCL 750.329. When discussing the charged crimes during closing argument, the prosecutor incorrectly commented that, had the discharge of the weapon been accidental, defendant would still be guilty of second-degree murder. This was not a correct statement of the law because the malice necessary to support second-degree murder "is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998). Contrary to the prosecutor's framing of the issue, an act done accidentally, or even with gross negligence, would not constitute malice. See *id.* at 466-467; *People v Holtschlag*, 471 Mich 1, 21; 684 NW2d 730 (2004); CJI2d 7.1.

However, any error in the prosecution's explanation of the law in this regard did not deprive defendant of a fair trial because the trial court properly instructed the jury on the elements of second-degree murder and the lesser included offense of common-law manslaughter and, in particular, the specific mens rea necessary to support a second-degree murder conviction as opposed to the lesser offense of common-law involuntary manslaughter. The jury was further instructed that if there was a conflict between the trial court's explanation of the law and that offered by the attorneys, the jury must follow the trial court's instructions. Under these circumstances, any misstatement of the law by the prosecutor did not affect defendant's substantial rights. See *Grayer*, 252 Mich App at 357.

Defendant next argues that the prosecutor misstated the law when discussing the elements of statutory involuntary manslaughter by failing to acknowledge that self-defense could be used as a defense to this charge and suggesting that there was "no dispute" that the elements of this offense had been shown. Our review of the record reveals that the prosecutor merely argued that the elements of the offense had been established, and we see nothing improper in this argument.

Moreover, while the prosecutor did not discuss self-defense in relation to this charge, the trial court instructed the jury on self-defense and defense counsel argued for the applicability of this defense. Defendant has not shown plain error and he is not entitled to relief on this basis.

Defendant also asserts that, with respect to self-defense, the prosecutor misstated the law when she asserted that defendant had other options such as keeping the door shut and going to "a different part of [his] house" rather than engaging with McBride. Troublingly, the prosecutor asserted that going to a different part of the house could not be characterized as "retreating." To the extent the prosecutor suggested that defendant had an obligation to retreat to another area of his home, this was improper because a person does not have a duty to retreat in his or her own home. *People v Richardson*, 490 Mich 115, 121; 803 NW2d 302 (2011). However, this potentially misleading remark does not entitle defendant to relief because elsewhere the prosecutor expressly acknowledged that there is no duty to retreat in a person's own home, the trial court instructed the jury that a person does not have a duty to retreat while in his or her own home, and the jury was informed that a porch is considered part of a home. Given the proper instruction by the trial court, any misstatement by the prosecutor did not affect defendant's substantial rights. See *Grayer*, 252 Mich App at 357.

Next, defendant argues that the prosecutor improperly vouched for defendant's guilt when she stated that she had seen "more homicide cases than [she] care[d] to recall," that "this case is no different than a typical murder case," that defendant was "no different than a typical murder defendant," and that "[m]urder defendants try to deflect, try to lie[,] [t]ry to get themselves out of trouble." In a related argument, defendant also argues that the following statements by the prosecutor during closing argument were improper:

> Because our job, ladies and gentlemen, is to see that justice is served. Our job is to prosecute the guilty. And your job is to make that determination. You decide whether or not we've done our job properly. That's your decision.
>
> You have to tell us whether or not we've met our burden. We don't run away from our burden. It's our burden. That's what our constitution says. We don't take it lightly that we would charge a home owner. We don't take that lightly.
>
> There's plenty of home owners that haven't been charged. We look at the law. We are guided by what the law requires. And the law in this case required a charge of murder in the second degree. And the intentionally aiming that gun.
>
> You guys get to make the final call. There's no self-defense here. Where's the fear? Where's the fear?

It is improper for a prosecutor to use the prestige of the prosecutor's office to inject personal opinion or for the prosecutor to ask the jury to suspend its power of judgement in favor of the wisdom or belief of the prosecutor's office. *People v Bahoda*, 448 Mich 261, 286; 531 NW2d 659 (1995). In this case, viewed in isolation, some of the prosecutor's remarks could be understood as an invitation for the jury to suspend its own critical analysis of the evidence and accept the prosecutor's assurances of the defendant's guilt. Viewed in context, however, the

remarks constituted an argument, albeit unartfully presented, that the prosecution had met its burden in overcoming defendant's self-defense claim. The prosecutor repeatedly stated that it was up to the jury to decide whether the prosecution had met its burden of proving defendant guilty. Moreover, any improper prejudicial effect could have been cured by an appropriate instruction, upon request. Accordingly, there was no outcome-determinative plain error. *Unger*, 278 Mich App at 235.

Defendant next argues that a prosecutor improperly denigrated defense counsel when she discussed the fact that defendant had changed his initial claim that the shooting was accidental to a claim that he acted in self-defense. A prosecutor may not personally attack defense counsel. *People v McLaughlin*, 258 Mich App 635, 646; 672 NW2d 860 (2003). Likewise, the prosecutor may not personally attack the defendant with "intemperate and prejudicial remarks," and may not suggest that a defendant or defense counsel is trying to manipulate or mislead the jury. *People v Light*, 480 Mich 1198; 748 NW2d 518 (2008); *Bahoda*, 448 Mich at 283; *People v Watson*, 245 Mich App 572, 592; 629 NW2d 411(2001). Viewed as a whole, the thrust of the prosecutor's argument was to properly suggest that defendant should not be believed when he stated that he was in fear when he shot McBride because he had earlier implied to the police that the shooting was "accidental." But in doing so, the prosecutor improperly accused defense counsel of having "coached" defendant to change his story to one of self-defense. This type of attack on defense counsel was wholly inappropriate. See *Light*, 480 Mich at 1198. However, because an appropriate jury instruction could have cured any perceived prejudice, reversal is not required. *Unger*, 278 Mich App at 235.

Defendant also argues that the prosecutor improperly appealed to the jurors' sympathy for McBride and mischaracterized the defense counsel's self-defense argument as an attack on the victim's character. "Appeals to the jury to sympathize with the victim constitute improper argument." *Watson*, 245 Mich App at 591. However, an otherwise improper remark may not require reversal when offered in response to an issue raised by defense counsel. *Dobek*, 274 Mich App at 64. Such is the case here. That is, the prosecutor's rebuttal argument was responsive to defense counsel's earlier argument that focused on the victim's actions. Defense counsel argued that McBride was in the process of "changing" because she was "coming down" from her intoxication, and claimed that "alcohol is what caused all of this." The prosecutor's rebuttal argument, essentially that 19-year-old McBride did not deserve to die simply because she was drunk and high, was responsive to defense counsel's argument. Moreover, any prejudicial effect could have been cured with a jury instruction upon request, meaning that defendant has not shown plain error. *Unger*, 278 Mich App at 235.

For these reasons, defendant is not entitled to reversal on the basis of this issue. The prosecutor's conduct did not deny defendant a fair trial.

III. DOUBLE JEOPARDY

Defendant next argues that his convictions for both statutory involuntary manslaughter and second-degree murder, arising from the death of one victim, violate the double jeopardy prohibition against multiple punishments for the same offense. In particular, defendant argues that double jeopardy principles should prevent convictions for both second-degree murder and statutory manslaughter under MCL 750.329 because the crimes contain contradictory elements

insofar as murder requires malice while MCL 750.329(1) specifies that statutory manslaughter must be committed "without malice."

We review this question of constitutional law de novo. *People v Nutt*, 469 Mich 565, 573; 677 NW2d 1 (2004). The Double Jeopardy Clause of the Fifth Amendment provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb. . . ." US Const V. In *People v Miller*, 498 Mich 13, 17-19; 869 NW2d 204 (2015), our Supreme Court recently provided a comprehensive overview of the constitutional double jeopardy protections, and, in particular, the analysis to use when determining whether dual convictions violate the "multiple punishments" strand of double jeopardy:

> The multiple punishments strand of double jeopardy "is designed to ensure that courts confine their sentences to the limits established by the Legislature" and therefore acts as a "restraint on the prosecutor and the Courts." The multiple punishments strand is not violated "[w]here 'a legislature specifically authorizes cumulative punishment under two statutes. . . .'" Conversely, where the Legislature expresses a clear intention in the plain language of a statute to prohibit multiple punishments, it will be a violation of the multiple punishments strand for a trial court to cumulatively punish a defendant for both offenses in a single trial. "Thus, the question of what punishments are constitutionally permissible is not different from the question of what punishments the Legislative Branch intended to be imposed."
>
> The Legislature, however, does not always clearly indicate its intent with regard to the permissibility of multiple punishments. When legislative intent is not clear, Michigan courts apply the "abstract legal elements" test articulated in [*People v Ream*, 481 Mich 223; 750 NW2d 536 (2008),] to ascertain whether the Legislature intended to classify two offenses as the "same offense" for double jeopardy purposes. This test focuses on the statutory elements of the offense to determine whether the Legislature intended for multiple punishments. Under the abstract legal elements test, it is not a violation of double jeopardy to convict a defendant of multiple offenses if "each of the offenses for which defendant was convicted has an element that the other does not. . . ." This means that, under the *Ream* test, two offenses will only be considered the "same offense" where it is impossible to commit the greater offense without also committing the lesser offense.
>
> In sum, when considering whether two offenses are the "same offense" in the context of the multiple punishments strand of double jeopardy, we must first determine whether the statutory language evinces a legislative intent with regard to the permissibility of multiple punishments. If the legislative intent is clear, courts are required to abide by this intent. If, however, the legislative intent is not clear, courts must then apply the abstract legal elements test articulated in *Ream* to discern legislative intent. [Footnotes omitted.]

Consequently, to determine whether there is a double jeopardy violation in this case, we first consider whether the statutory language evinces a clear intent with respect to the

permissibility of multiple punishments. *Id.* In particular, the two statutes at issue are MCL 750.317 and MCL 750.329(1). Second-degree murder is codified at MCL 750.317, which states:

> All other kinds of murder shall be murder of the second degree, and shall be punished by imprisonment in the state prison for life, or any term of years, in the discretion of the court trying the same.

In comparison, statutory involuntary murder is set forth in MCL 750.329(1), which provides:

> A person who wounds, maims, or injures another person by discharging a firearm that is pointed or aimed intentionally but without malice at another person is guilty of manslaughter if the wounds, maiming, or injuries result in death.

Neither statute includes language that plainly indicates whether or not the Legislature intended to authorize multiple punishments. Cf. *Miller*, 498 Mich at 22-23. In *Miller*, the Court found that the express authorization of multiple convictions in one section of the OWI statute in context of a multi-section statute where other sections were silent as to multiple convictions was, in fact, clear evidence of an intent to exclude multiple convictions for violations of other sections of the same act. *Id.* at 24-25. No such argument is offered in this case. Instead, defendant argues on appeal that the legislative intent to prohibit multiple punishments is expressed in the inconsistency between second-degree murder and MCL 750.329(1), insofar as second-degree murder requires a finding of malice while MCL 750.319(1) involves a crime committed "without malice." See *People v Smith*, 478 Mich 64, 70; 731 NW2d 411 (2007). Defendant cites no authority for this proposition, nor are we aware of any. To the contrary, when an offense requires criminal intent, the necessary *mens rea* is simply an element of the offense. See, generally, *People v Kowalski*, 489 Mich 488, 499 n 12; 803 NW2d 200 (2011). And, when comparing elements under the abstract legal elements test, if offenses contain differing elements, conviction under both does not constitute a double jeopardy violation.[3] See *People v Strawther*, 480 Mich 900; 739 NW2d 82 (2007); *People v Werner*, 254 Mich App 528, 535-536; 659 NW2d 688 (2002). In short, the abstract legal elements test applies in this case and, given that the offenses at issue obviously involve different elements, there was no double jeopardy violation. See *Smith*, 478 Mich at 70 (detailing differing elements of second-degree murder and statutory manslaughter); *Strawther*, 480 Mich at 900.

IV. SENTENCING

[3] Indeed, while defendant frames his argument as one involving double jeopardy principles, in actuality his complaint is that the jury reached inconsistent verdicts insofar as it convicted him of both second-degree murder requiring malice and statutory involuntary manslaughter under MCL 750.329(1), which must be committed without malice. As noted, this claim of inconsistency does not amount to a double jeopardy violation. See generally *People v Wilson*, 496 Mich 91, 102; 852 NW2d 134 (2014). Moreover, "inconsistent verdicts within a single jury trial are permissible and do not require reversal." *People v Putman*, 309 Mich App 240; 870 NW2d 593 (2015). "Juries are not held to any rules of logic nor are they required to explain their decisions." *People v Vaughn*, 409 Mich 463, 466; 295 NW2d 354 (1980).

Defendant lastly argues that he is entitled to resentencing because the trial court sentenced him at the low end of the sentencing guidelines range, based on its erroneous belief that it was bound to sentence him within the guidelines range absent a substantial and compelling reason for a departure. In keeping with this Court's decision in *People v Terrell*, __ Mich App __; __ NW2d __ (2015) (Docket No. 321573), we remand for *Crosby* proceedings in accordance with the procedures set forth in *Lockridge*.

In *Lockridge*, 498 Mich at 364, our Supreme Court held that "the rule from *Apprendi v New Jersey*, 530 US 466; 120 S Ct 2348; 147 L Ed 2d 435 (2000), as extended by *Alleyne v United States*, 570 US ___; 133 S Ct 2151; 186 L Ed 2d 314 (2013), applies to Michigan's sentencing guidelines and renders them constitutionally deficient" "the extent to which the guidelines *require* judicial fact-finding beyond the facts admitted by the defendant or found by the jury to score offense variables that *mandatorily* increase the floor of the guidelines minimum sentence range . . . ." To remedy the constitutional violation, the Court severed MCL 769.34(2) "to the extent that it is mandatory" and held that "sentencing courts will hereafter not be *bound* by the applicable sentencing guidelines range[.]" *Lockridge*, 498 Mich at 391-392. The Court also struck down MCL 769.34(3), which required a "substantial and compelling reason" to depart from the guidelines range, and held that a court may exercise its discretion to depart from the guidelines range without articulating substantial and compelling reasons. *Id.* Following *Lockridge*, a departure sentence need only be reasonable. See *People v Steanhouse*, ___ Mich App ___; ___ NW2d ___ (2015) (Docket No. 318329), slip op at 21-24.

With respect to a defendant's entitlement to relief on appeal, in *Lockridge*, the Court specified that unpreserved claims of error involving judicial fact-finding were subject to plain error analysis and that plain error cannot be established when "(1) facts admitted by the defendant and (2) facts found by the jury were sufficient to assess the minimum number of OV points necessary for the defendant's score to fall in the cell of the sentencing grid under which he or she was sentenced." *Lockridge*, 498 Mich at 394-395. Conversely, a defendant will have made a threshold showing of error if there is no upward departure involved and "the facts admitted by a defendant or found by the jury verdict were *insufficient* to assess the minimum number of OV points necessary for the defendant's score to fall in the cell of the sentencing grid under which he or she was sentence." *Id.* at 395. A defendant who makes this threshold showing of potential plain error is entitled to a *Crosby* remand for further inquiry. *Id.*

Following *Lockridge*, this Court has addressed preserved claims of sentencing error and determined that a *Crosby* remand is appropriate, even in the absence of evidence that judicial fact-finding increased the minimum sentence, if the trial court's use of the sentencing guidelines was mandatory at the time of sentencing. Most notably, in *Terrell*, this Court explained:

> In [*People v Stokes*, __ Mich App __; __ NW2d __ (2015)] this Court concluded that where judicially-found facts increased the minimum sentence guidelines range, the proper remedy was to remand for the *Crosby* procedure to be followed to determine whether the error was harmless. In this case, however, any judicial fact-finding did not increase the minimum sentence guidelines because the scoring was supported by the jury verdict. Nonetheless, we adopt the remedy crafted in *Stokes* as the appropriate remedy here, because regardless of the fact that judicial fact-finding did *not* increase defendant's minimum sentence

> guidelines range, the trial court's compulsory use of the guidelines was erroneous in light of *Lockridge*. Here, the trial court was not obligated to sentence defendant within the minimum sentence guidelines range and, instead, was permitted to depart from the guidelines range without articulating a substantial and compelling reason, so long as the resulting sentence was itself reasonable. Therefore, we conclude that a remand for the *Crosby* procedure is necessary to determine whether the error resulting from the compulsory use of the guidelines was harmless. [*Terrell*, slip op at 9 (footnotes omitted).]

In this case, the sentencing guidelines as scored resulted in a recommended minimum sentence range of 180 to 300 months or life. The trial court imposed a sentence at the lowest end of that range. In doing so, the court commented that it "cannot go below the guidelines." Defendant did not object at sentencing, and he does not argue on appeal that judicial fact-finding altered the minimum guideline range as required to establish plain error under *Lockridge*. But, defendant did move this Court for a remand for resentencing under *Lockridge*. Under *Terrell*, this was sufficient to preserve his *Lockridge* challenge. See *Terrell*, slip op at 8 & n 38. Moreover, as in *Terrell*, defendant was sentenced before the Supreme Court decided *Lockridge*, which significantly altered the manner in which a trial court is to consider and apply the statutory sentencing guidelines. Consequently, because the trial court's compulsory adherence to the guidelines range was erroneous, in keeping with *Terrell*, we remand for *Crosby* proceedings. Defendant has the option of avoiding resentencing by promptly notifying the trial court of that decision. *Lockridge*, 498 Mich at 398. If notification is not received in a timely manner, the trial court should continue with the *Crosby* proceedings as described in *Lockridge*.

Affirmed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Cynthia Diane Stephens
/s/ Joel P. Hoekstra

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THEODORE PAUL WAFER,

Defendant-Appellant.

UNPUBLISHED
April 5, 2016

No. 324018
Wayne Circuit Court
LC No. 14-000152-FC

Before: STEPHENS, P.J., and HOEKSTRA and SERVITTO, JJ.

SERVITTO, J. (*dissenting in part and concurring in part*).

I respectfully dissent from the majority's conclusion that defendant's convictions for both statutory involuntary manslaughter and second-degree murder, arising from the death of one victim, do not violate the double jeopardy prohibition against multiple punishments for the same offense. In all other respects, I concur with the majority.

The majority sets forth the correct analysis to use in order to determine whether dual convictions violate the "multiple punishments" prohibition of double jeopardy. As stated in *People v Miller*, 498 Mich 13, 18; 869 NW2d 204 (2015), the multiple punishments strand of double jeopardy is not violated if the Legislature specifically authorizes cumulative punishment under two statutes. And, where the Legislature expresses a clear intention in a statute to prohibit multiple punishments, "it will be a violation of the multiple punishments strand for a trial court to cumulatively punish a defendant for both offenses in a single trial." *Id.* Thus:

> when considering whether two offenses are the "same offense" in the context of the multiple punishments strand of double jeopardy, we must first determine whether the statutory language evinces a legislative intent with regard to the permissibility of multiple punishments. If the legislative intent is clear, courts are required to abide by this intent. If, however, the legislative intent is not clear, courts must then apply the abstract legal elements test articulated in [*People v*] *Ream*[, 481 Mich 223; 750 NW2d 536 (2008)] to discern legislative intent. [*Miller*, 498 Mich at 19].

I disagree, however, with the majority's conclusion that neither the statute governing second degree murder, MCL 750.317, nor the statute governing involuntary manslaughter, MCL 750.329(1), plainly evince a legislative intent with respect to multiple punishments. Because of

my disagreement, I would further find that the test articulated in *Ream*, *supra*, need not be utilized.

MCL 750.317 states, simply, that "[a]ll other kinds of murder shall be murder of the second degree, and shall be punished by imprisonment in the state prison for life, or any term of years, in the discretion of the court trying the same." While this statute itself does not define what, exactly, constitutes second degree murder, or articulate the specific elements necessary to convict a defendant of the crime, it is long familiar that second degree murder finds its genesis in the common law. See, *People v King*, 58 Mich App 390, 401; 228 NW2d 391 (1975). Indeed, at common law, "murder" embraced all unlawful killing done with malice aforethought. *People v Scott*, 6 Mich 287, 292 (1859). As explained in *Scott*,

> Murder under our statute embraces every offense which would have been murder at common law, and it embraces no other crime. But murder is not always attended with the same degree of wicked design, or, to speak more accurately, with the same degree of malice. . . .
>
> The statute, recognizing the propriety of continuing to embrace within the same class all cases of malicious killing, has, nevertheless, divided these offenses into different grades for the purposes of punishment, visiting those which manifest deep malignity with the heaviest penalties known to our law, and punishing all the rest according to a sliding scale, reaching, in the discretion of the court, from a very moderate imprisonment to nearly the same degree of severity prescribed for those convicted of murder in the first degree. Each grade of murder embraces some cases where there is a direct intent to take life, and each grade also embraces offenses where the direct intent was to commit some other crime. . . .
>
> . . . we hold murder in the first degree to be that which is willful, deliberate, and premeditated, and all other murders to be murder in the second degree . . . .
>
> *[Scott*, 6 Mich at 292-294]

Thus, it is hardly a new principle that both at common law and today, one of the elements of second degree, or common-law, murder is malice. *People v Goecke*, 457 Mich 442, 463; 579 NW2d 868 (1998). The malice necessary to support second-degree murder "is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Id.* at 466.

The manslaughter statute, MCL 750.329(1), provides that "[a] person who wounds, maims, or injures another person by discharging a firearm that is pointed or aimed intentionally but without malice at another person is guilty of manslaughter if the wounds, maiming, or injuries result in death." The clear language in MCL 750.329(1) clearly and specifically excludes a mens rea of malice. And, the common-law definition of manslaughter is "the unintentional killing of another committed with a lesser mens rea [than the malice required for murder] of gross negligence or an intent to injure[.]" *People v McMullan*, 284 Mich App 149,

152; 771 NW2d 810 (2009) (internal quotations and citation omitted), aff'd 488 Mich 922 (2010).

There would have been no need to add the limitation "*but without malice*" in the manslaughter statute had the Legislature intended to authorize dual punishments for both second degree murder and manslaughter under these circumstances. Rather, the Legislature would have simply remained silent on the mens rea element. The fact that it did not do so supports a conclusion that the Legislature expressed a clear intent in the manslaughter statute to prohibit multiple punishments for manslaughter and murder. See *Miller*, 498 Mich at 18. And, we must presume that the Legislature "knows of the existence of the common law when it acts." *People v Moreno*, 491 Mich 38, 46; 814 NW2d 624 (2012). Thus, in enacting the manslaughter statute, the Legislature was well aware that second degree murder, at common law and continuing today, required a malice element and expressly and purposely excluded this element from the manslaughter statute as a distinguishing feature.

Given the Legislature's awareness of the requisite element of malice for second degree murder and its express exclusion of a malice element in the manslaughter statute, I would find that the Legislature expressed a clear intent in MCL 750.329(1) to prohibit multiple punishments for these two crimes. Defendant's convictions of and punishments for both second degree murder and manslaughter in the death of one person thus violated the multiple punishments strand of double jeopardy. *Miller*, 498 Mich at 18. I would therefore vacate defendant's manslaughter conviction on double jeopardy grounds and, on remand, direct the trial to consider (in addition to the *Lockridge*[1] sentencing issue) what effect, if any, vacating the manslaughter conviction has on defendant's appropriate sentence.

/s/ Deborah A. Servitto

[1] *People v Lockridge*, 498 Mich 358; 870 NW2d 502(2015).

Order

Michigan Supreme Court
Lansing, Michigan

June 5, 2020

153828 (80)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 153828
COA: 324018
Wayne CC: 14-000152-FC

THEODORE PAUL WAFER,
Defendant-Appellant.

_____/

By order of April 26, 2019, the motion for reconsideration of this Court's March 9, 2018 order was held in abeyance for *People v Price* (Docket No. 156180). On the Court's own motion, the motion for reconsideration of this Court's March 9, 2018 order is again considered, and it is GRANTED with respect to the defendant's double jeopardy issue. We AMEND this Court's March 9, 2018 order to read as follows:

> On October 12, 2017, the Court heard oral argument on the application for leave to appeal the April 5, 2016 judgment of the Court of Appeals. On order of the Court, the application for leave to appeal is again considered, and it is DENIED, with respect to the defendant's jury instruction and prosecutorial misconduct issues, because we are not persuaded that those questions presented should be reviewed by this Court. That part of the application for leave to appeal raising a double jeopardy issue remains pending.

We further order that Justice MARKMAN's accompanying dissenting statement to the Court's March 9, 2018 order remains unchanged.

We direct the Clerk to schedule oral argument on that part of the defendant's application for leave to appeal addressing double jeopardy. MCR 7.305(H)(1). The appellant shall file a supplemental brief within 42 days of the date of this order addressing whether the defendant's convictions for second-degree murder, MCL 750.317, and statutory manslaughter, MCL 750.329(1), violate constitutional prohibitions against double jeopardy. See *People v Miller*, 498 Mich 13 (2015). In addition to the brief, the appellant shall electronically file an appendix conforming to MCR 7.312(D)(2). In the brief, citations to the record must provide the appendix page numbers as required by MCR 7.312(B)(1). The appellee shall file a supplemental brief within 21 days of being served with the appellant's brief. The appellee shall also electronically file an appendix, or in the alternative, stipulate to the use of the appendix filed by the appellant. A reply, if

any, must be filed by the appellant within 14 days of being served with the appellee's brief. The parties should not submit mere restatements of their application papers.

We direct the Clerk to schedule the oral argument in this case for the same future session of the Court when it will hear oral argument in *People v Davis* (Docket No. 160775).

The Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issue presented in this case may move the Court for permission to file briefs amicus curiae.

t0602

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 5, 2020

Clerk